(22,889.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 813.

ROBERT P. ALLEN, GEORGE W. BELLAMY, AND WILLIAM F. McKNIGHT, RAILROAD COMMISSIONERS OF THE STATE OF ARKANSAS, APPELLANTS,

vs.

THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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F[1]—Freight and passenger statistics compiled from the reports of the Interstate Commerce Commission for the entire United States, group 8, St. L., I. M. & S. and St. L. S. W. Ry. Co. for the period of ten years ending June 30, 1907	5859	2571
G[1]—Cost and net earnings of intrastate freight business in Arkansas for the six months ending December 31, 1907, etc.—St. L., I. M. & S. Ry. Co.	5861	2573
H[1]—Cost and net earnings of intrastate freight business in Arkansas for the six months ending December 31, 1907, etc.—St. L. S. W. Ry. Co.	5863	2574
I[1]—Affidavit of E. K. Voorhees (part omitted in printing)	5865	2576
J[1]—Sketch showing main track in city limits of Fort Smith, Arkansas—St. L., I. M. & S. Ry. Co, etc. (omitted in printing)	5880	
K[1]—General instructions No. 16*a* of the Missouri Pacific Ry. Co. (omitted in printing)	5885	
L[1]—Graphic charts (" ")	5886	
M[1]—Graphic charts (" ")	5897	
N[1]—Railroad Commission standard freight distance tariff No. 3, in effect June 15, 1908 (omitted in printing)	5899	
Opinion of Judge Trieber, May 3, 1911	5957	2580
Stipulation to use testimony in both cases, etc	6077	2648
Order that court tariff remain in force pending appeal	6078	2648
Order of severance as to Henry Leigh and George L. McLean	6078	2649
Order allowing appeal, etc	6079	2649
Assignment of errors	6081	2650
Prayer for appeal and allowance of same	6088	2656
Bond on appeal	6090	2657
Order filing citation	6091	2658
Citation and acceptance of service	6092	2658
Order extending time to file record	6093	2659
Clerk's certificate	6094	2659
Original citation	6095	2659
Stipulation as to printing record	6096	2660

1 In the United States Circuit Court for the Western Division of the Eastern District of Arkansas. In Chancery.

Be it remembered, That on the 18th day of July, A. D., 1908, came into the office of the Clerk of the Circuit Court of the United States, for the Western Division of the Eastern District of Arkansas, the St. Louis, Iron Mountain & Southern Railway Company, by Moore, Smith & Moore, Esqs., its solicitors and filed therein, on the Chancery side of said Court, its Bill of Complaint against Robert P. Allen, John W. Crockett and John E. Hampton, Railroad Commissioners of the State of Arkansas, Henry Leigh and George L. McLean—which Bill of Complaint is as follows:—

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff.

v.

ROBERT P. ALLEN, JOHN W. CROCKETT and JOHN E. HAMPTON, Railroad Commissioners of the State of Arkansas; Henry Leigh and George L. McLean, Defendants.

To the Honorable Judges of the Circuit Court of the United States for said District:

Your orator, St. Louis, Iron Mountain & Southern Railway Company, brings its bill of complaint against Robert P. Allen, John W. Crockett, and John E. Hampton, as members of and constituting the Railroad Commissioners of the State of Arkansas.

First. Your orator is a corporation organized under the laws of the State of Arkansas with its domicile at the City of Little
2 Rock, Pulaski County, in said State.

Second. The said Defendants, Robert P. Allen, John W. Crockett and John E. Hampton, are citizens and residents of the State of Arkansas, and constitute the Railroad Commission of said State. Said John W. Crockett and John E. Hampton reside in said district, said Robert P. Allen resides at Van Buren, in Crawford County, in the Western Judicial District of said State. The Act of the Legislature of said State under which said Commission was created, fixes and establishes the domicile of the Commission at the City of Little Rock, in the County of Pulaski, in said State and in the Western Division of the Eastern Judicial District thereof. The Defendants Henry Leigh and George McLean are citizens of the State of Arkansas and reside at the City of Little Rock, in said district.

Third. Your orator further avers that the Act creating said Railroad Commission heretofore referred to, approved March 11, 1899, entitled, "An Act to provide for the regulation of railroad, freight and passenger tariffs, in this State, to prevent unjust discrimination by extortion in the rates charged for transportation of passengers and freights, and to prohibit railroad companies, cor-

porations and lessees in this State from charging other than just and reasonable rates, and to punish the same, and to prescribe the mode of procedure and rules of evidence in relation thereto, and to appoint commissioners and to prescribe rules for their government, and define their powers and duties in relation to the same," and Acts supplemental to and amendatory thereof, invest in said Railroad Commission the power and impose upon it the duty to make and put in effect reasonable and just rates of freight, express and passenger tariffs, to be observed by all persons and corpora-
3 tions operating any railroad or engaged in transporting persons or property in said State, and to make just and reasonable rates of freight, express and passenger traffic on connecting railroads operated by different and independent companies or corporations between stations within said State, to be observed by all persons, companies or corporations operating connecting railroads within the State, and if two or more connecting lines of railorad in said State shall fail to agree upon the division of charges arising from transportation of freight, passengers or cars over their lines, said Commission is authorized to make the division and fix the prorata part of such charges to be received by each of said connecting lines. Said Act further provides that in case any person or corporation engaged in operating a railroad in the State shall not do, or permit to be done, any act, matter or thing in said Act required to be done, or shall be guilty of the violation of any of the provisions of the Act, such person or corporation shall be held to pay to the person, firm or corporation thereby injured double the amount of the damage by him sustained, and all costs to be recovered by such person, firm or corporation; and in all actions between private parties and railroad companies brought under said Act, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission prior to the institution of such action shall be held to be reasonable, fair and just, and shall not be controverted therein. It is also provided by said Act that if any person or corporation operating a railroad in said State, or any lessee of such person or corporation, shall violate any of the provisions of the Act, or aid or abet therein, or shall violate any tariff of charges as fixed by said Commission, or any rules regarding railroads or express companies as made by said Commission, such person, corporation or lessee shall be liable to a penalty of not less than $500.00 nor more than $3000.00 for each violation of said Act, in an action brought in the name of the State, and in the County of
4 which such violation shall occur, and the said Commission shall institute such actions as may be necessary for the recovery of the penalties prescribed therein through the Prosecuting Attorney of the proper district, or through Counsel specially employed by said Commission.

And your orator avers that the effect of the aforesaid provisions of said Act is to deny your orator and all persons and corporations operating railroads in said State of the right to a judicial investigation of the validity and reasonableness of the rates, rules, regulations and classifications prescribed by said Commission, and to

deprive your orator and all others in like condition of due process of law, contrary to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Fourth. Your orator further alleges that on the 15th day of July, 1904, the predecessors of the Defendants, the then acting Railroad Commissioners of said State, assuming to act under the authority of the aforesaid provisions of the statute of said State, promulgated Standard Freight Distance Tariff No. 2, prescribing freight rates and charges applicable to classes and commodities between all stations in said State, on all railroads operated therein subject to western classifications as adjusted to traffic in said State. The rates therein prescribed were continued in force, with certain amendments thereof made and promulgated by said Commission from time to time until June 4, 1908, when said Defendants, acting in their official capacity, adopted Standard Freight Distance Tariff No. 3, applying on classes and commodities between all railroad stations in said State, subject to western classifications as adjusted to traffic therein, cancelling Standard Freight Distance Tariff No. 2 aforesaid, and ordered that the same take effect June 15, 1908.

Said tariff contains many of the rates and regulations that were contained in Standard Freight Distance Tariff No. 2, as aforesaid, and the changes and amendments made therein by said Commission since said Tariff No. 2 was promulgated, and other changes in rates on classes and commodities made in the order of said Commission adopted on June 4, 1908. A copy of said Standard Freight Distance Tariff No. 3 is herewith filed as Exhibit "A" and made a part hereof.

Fifth. Your orator avers that each and all of the charges and rates prescribed in said Tariff No. 3 aforesaid, as well as in the preceding Tariff No. 2, applying on all classes and commodities as aforesaid are unreasonable, unjust, oppressive, discriminative, confiscatory and void, both in respect to said order as a whole and in respect to each and every rate, charge, tariff, schedule, classification, rule and regulation separately:

(1) The railroad equipment, property and franchises owned and used by your orator in operating its said road in said State represents an investment of $40,906,572.00, according to the last assessment of said property for taxation by the State of Arkansas through the State Board of Railroad Assessors, which assessment is now in force. Orator has exercised as great a degree of economy in the use and operation of said property as was compatible with the interest of the public and with safe and efficient service to the public, only employing such officers, agents and employees, and expending such amounts in the maintenance and repair of its road bed, tracks and stations and new equipment of engines, cars and other appliances necessary to the operation of its road and the maintenance of said property, as was necessary and essential to the due and proper operation of its trains, and to the maintenance of said property with due regard to its preservation, and the safety of the public. That no unreasonable salaries or wages have been, or are now being paid to any of its officers or employees. But notwithstanding that orator

has practised all reasonable and proper economy in operation
6 and maintenance as aforesaid, it has been unable and will be unable to operate said road at a profit at the rates prescribed in said tariff. On the contrary, said rates do not and will not yield a just and reasonable return upon the value of orator's property used in said service, either in respect to the money invested in said property or the service rendered. And in that behalf your orator alleges that the total earnings from its intra-state business in the transportations of freight in the State of Arkansas, during the year 1907 did not exceed the sum of $640,284.17; that the expense of operation solely incident to said business, and the fixed charges solely incident and chargeable to intra-state transportation of freights was $784,602.14. That the total earnings of said property from the transportation of freight, wholly within the State of Arkansas is not and will not be sufficient under the rates on classes and commodities prescribed as aforesaid as a whole, after paying operating expenses, charges for maintenance, taxes and other necessary fixed charges appertaining to said business, to yield any return by way of compensation for the service rendered by your orator, and the effect of such rates is and will be to prevent your orator from receiving any return or profit for the service rendered by it to the public, and will deprive orator of its property without due process of law, and will deny to it the equal protection of the laws.

(2) Your orator represents that among the principal commodities transported on the lines of railroad in the State of Arkansas are coal and coal slack; that the principal, in fact, the only, coal fields now or heretofore operated in said State are situated in the counties of Pope, Johnson, Franklin, Sebastian and Logan; that the coal mined in said counties is shipped from the following stations: that in Johnson County from Spadra, Coal Hill, Clarksville, Cabin
7 Creek; that in Franklin County from Denning; that in Sebastian County from Jenny Lind, Huntington, Burma, Montreal, Hackett, Jensen, Bonanza, Dallas, Dennison, Excelsior, Greenwood, Gunther, Harp, Hartford, Hoffmann, Hoye, Fidelity, Midland, Patterson and Prairie Creek and that in Logan County from Knoxville, Piney and Paris.

That under the commodity rates prescribed in the aforesaid tariff, the rate on coal for a distance of 110 to 120 miles is $1.00 per ton; 120 to 140 miles, $1.05 per ton; 140 to 160 miles, $1.10 per ton; 160 to 170 miles, $1.25 per ton; 170 to 180 miles, $1.30 per ton; 180 to 190 miles, $1.35 per ton; 190 to 200 miles, $1.40 per ton; 200 to 210 miles, $1.45 per ton; 210 to 220 miles, $1.50 per ton. That the principal market in said Shate for coal and coal slack is the City of Little Rock and points north, south and east of said City; that the City of Little Rock is 114 miles from Coal Hill, from 141 to 156 miles from the aforesaid coal stations in Sebastian County and 165 miles from the station of Paris, in Logan County, by the lines of road connecting said points with said City, and over which the product of the said coal mines is shipped to said markets. All coal shipped to said markets and each of them is routed through the

City of Little Rock, and the same difference in length of haul from the stations at which said shipments of coal originate exists as to all of them. That the coal shipped to points north, south and east of said City is there transferred to different lines of road, and in most cases is subject to the joint through rates prescribed by said Commission. That the coal mine situated at Jenny Lind in Sebastian County is on your orator's line of road, other mines situated in said county are on the line of the St. Louis and San Francisco and the Midland Valley Railroads, which connect with the main line of your orator. All of said lines of railroad connect with your orator's
8 line at the City of Little Rock either directly or through connecting lines. The mines at Paris in Logan County are on the Arkansas Central Railroad which connects with your orator's line at Ft. Smith. That under the regulations adopted by said Commission in regard to rates on commodities Coal Hill rates apply from all points in Logan, Franklin and Sebastian Counties, and all points in Johnson County west of Coal Hill to the City of Little Rock and points north, south and east of said City, thus fixing the maximum rate from any of said points to the City of Little Rock at $1.00 per ton. That said rate does not pay the cost, including the terminal service, of handling said product and is unreasonable, unjust and confiscatory. A large part of the coal shipped from the aforesaid stations is transported over connecting lines of railroad, and the rate prescribed as aforesaid applies whether said commodities are shipped over one or more than one railroad, under the regulations adopted by the said Commission as aforesaid in connection with joint rates on commodities established by said Board. That the distance by rail from the aforesaid stations to Little Rock is from 143 to 165 miles; that the rate from the aforesaid stations to the City of Little Rock as prescribed by said Commission on the several connecting road- being $1.60 per ton, and yet your orator and its connecting lines are compelled under the aforesaid regulations to transport said products from said stations to all stations on your orator's road on a basis of $1.00 per ton, and it avers that the aforesaid rates are not only confiscatory, but they are descriminative, and do not afford to the said lines, or either of them a fair, reasonable or just compensation for the service rendered in transporting said products.

(3) Your orator alleges that a large proportion of the entire tonnage transported over its lines of railroad originating in Arkansas consists of timber and timber products; that at least
9 90 per cent of said tonnage is shipped from points in said State to points in other States and is inter-state commerce. Under the universal practice prevailing among shippers and railroad companies in said State, where the timber is situated at a distance from the mills, it is transported by rail and concentrated at milling points for the purpose of being converted into lumber and other products, and takes the prevailing rate under inter-state shipments from the point at which the shipment of the rough material originated in said State to the destination of the mill product in other States; that said milling privilege in transit does not affect the inter-state character of said shipments, but is an incident only in the

inter-state movement. The practice of all the railroads in the State engaged in the transportation of that commodity was, prior to April 1, 1907, to collect from the shipper the local rate from the place at which the shipment originated to the milling or concentration point. After the product had been milled and shipped to market the regular inter-state rate from the point of origin to the point of destination was applied, allowing the shipper the difference between the local and through rate between the stations at which the rough material was received and the point of concentration. All shipments of rough material and the several products thereof, viz., lumber, staves, bolts, spokes, handles, hoops, clubs, boat oars, furniture, etc., took that course. On April 1, 1907 said Commission, recognizing the aforesaid practice and for the purpose of regulating the same made an order that the following rates should apply on the shipment of rough lumber, staves, flitches, bolts and logs, in car loads, between all points in Arkansas, viz: for a distance of from—

1 to 50 miles, inclusive, 2 cents per cwt.
51 to 100 miles, inclusive, 2½ cents per cwt.
101 to 150 miles, inclusive, 3½ cents per cwt.
151 to 250 miles, inclusive, 5 cents per cwt.
250 miles and over 8 cents per cwt.

10 Said rates are made upon condition expressed in said order that the manufactured product shall be re-shipped over the same line bringing in the rough material. Said order further provided that carriers would be allowed to require consignees desiring to avail themselves of the benefit of said rates to enter into contract with reference to the re-shipment of the finished product under the rules prescribed by said Commission, and your orator avers that said order of the Commission was made with the direct intent and purpose of establishing rates applicable between the point of origin of the rough material and the point of concentration for milling purposes, and intending and requiring that such rates should be applied to all shipments of such material from the point of origin in said State to the points of destination in other states; and orator avers that such order is a direct interference with inter-state commerce over which said board has no jurisdiction, and is, for that reason, unlawful and void. Orator further avers that the aforesaid rates are unreasonable and oppressive, because they do not afford the carriers any compensation whatever for the service rendered in connection with the transportation of said commodities, and are therefore confiscatory, and take the property of orator and other carriers in said State without compensation, and are in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, prohibiting the taking of property without due process of law and without compensation, and guaranteeing to all persons the equal protection of the laws.

(4) Your orator alleges that cotton is the principal agricultural product of the State of Arkansas; that practically the entire crop raised in the State each year is shipped to markets in other States and foreign markets. That on account of economy in transporting said products it has come to be a universal practice to compress

11 the same in small bales or packages, whereby a large number of bales can be loaded on a car; that it is impracticable to

establish and operate plants and machinery for the purpose of compressing cotton except at a few central points in the State, and for that reason all cotton destined to markets outside of said State are shipped in the original bales or packages as prepared at the local ginneries throughout the country and concentrated at points on the lines of railroad where compresses are operated, for compression. Under the universal practice and rulings of the Inter State Commerce Commission, all cotton raised in said State and shipped to points in other States and foreign markets is subjected to a process of compression for the purposes aforesaid, the shipper being required in the first instance to pay the local rate to the point of concentration; but upon re-shipment to points of destination, the through, or inter-state rate, is applied to the entire shipment from the point of origin (that is to say, the station from which the same was consigned to the point of concentration), to the point of ultimate destination, the difference in the local rate between the point of origin and the place of concentration being allowed the shipper and adjusted in the charge applied to the inter-state shipment. Said privilege of compression in transit does not affect the inter-state character of said shipments, but is an incident only in the inter-state movement. On September 16, 1907, said Commission made and promulgated an order prescribing the following rates on un-compressed cotton in bales between all stations in said State on the following lines of railroad, viz: Chicago, Rock Island and Pacific Railway and branches, Kansas City Southern Railway, Louisiana and Arkansas Railroad, St. Louis and San Francisco Railroad and branches, St. Louis, Southwestern Railway and branches, St. Louis, Iron Mountain & Southern Railway, leased, independent and operated lines—

12 For a distance of 30 miles and under 10 cents per cwt.

For a distance of 45 miles and over 30 miles, 11 cents per cwt.

For a distance of 50 miles and over 45 miles, 12 cents per cwt.

For a distance of 75 miles and over 50 miles, 14 cents per cwt.

For a distance of 100 miles and over 75 miles, 15 cents per cwt.

For a distance of 125 miles and over 100 miles, 20 cents per cwt.

For a distance of 150 miles and over 125 miles, 30 cents per cwt.

For a distance of over 150 miles 40 cents per cwt.

And further provided, for the purpose of applying said rates to your orator, that if lines of railway should include the following group and continuous mileage should apply between any two or more roads embraced in said group, viz: Your orator, Arkansas and Louisiana Railroad, Arkansas Central Railroad, Arkansas Midland Railroad, Arkansas Southwestern Railway, Brinkley, Helena and Indian Bay Railroad, El Dorado and Bastrop Railroad, Little Rock and Monroe Railway, Little Rock and Hot Springs Western Railroad, Mississippi River, Hamburg and Western Railroad, Pine Bluff and Western Railroad.

Said order further provides that—

"In so far as the jurisdiction of the Commission is involved, the railroad companies operating in this State may continue in effect the present rates, rules and regulations in respect to the concentration

of cotton at compress points, or the railroad companies may make such reasonable modifications of same as they may desire, provided, that before any such change or modification, desired to be made by any railroad company, shall become operative, the same shall be first submitted to and approved by the Commission.

"All rates, rules and regulations in effect in this respect with reference to the shipment of cotton, which is not expressly disturbed or affected by the provisions of this order, shall remain in ef-
13 fect to the same extent as if this order had not been issued."

Referring therein to the practice hereinbefore alleged in regard to the concentration and shipment of cotton from said State into other States and to markets in foreign countries.

Orator avers that the movement of cotton as aforesaid, and each and all of the parts thereof, as hereinbefore alleged, have been treated and recognized by the public and by the Inter-State Commerce Commission of the United States as inter-state commerce, and the direct intent and effect of the aforesaid rules, rates and orders made and promulgated by the Railroad Commission of the State of Arkansas, in regard to the transportation of cotton is a direct and intentional interference with inter-state commerce, both as regards the rates and the regulations in reference to the transportation thereof. Wherefore, it avers that the same is unlawful and void. And orator further avers that said rates are so unreasonable, unjust and oppressive as not to afford any profit to the carriers handling the same and are confiscatory and in violation of the aforesaid provisions of the Fourteenth Amendment to the Constitution of the United States.

(5) Your orator alleges that its main line of railroad extends from St. Louis, in Missouri, to Texarkana, in Arkansas, with branches from Knobel to Helena, Bald Knob to Memphis, Diaz to Crest, Camden to Eldorado, that it likewise owns and operates lines of railroad extending from Little Rock to Greenwood via Ft. Smith, Little Rock to Cypress on the Louisiana State Line, from Arkansas City, Ark., to Warren, in Bradley County, and from New Latour to Arkla, via McGehee. That all of said lines, owned and controlled by your orator as aforesaid, are operated as a unit; that a very large amount of inter-state traffic passes over them and each of them between the States in and through which the same are oper-
14 ated and into and through other States with which said lines form connections at their several termini. That the local rates in the several States into and through — said lines pass, enter to a very large extent, and have a controlling influence, on the through rates charged on inter-state shipments which are made on a combination, or percentage of the combination, of the immediate local rates, by adding the local rates within the several States into and through which such shipments pass. Said through rates are thus constructed, and from necessity and under the rulings of the Inter-state Commerce Commission of the United States and the orders of said Railroad Commission of the State of Arkansas, affects and controls rates on inter-state shipments passing from, into or through said State by its effect in reducing inter-state rates to the sum of

the combination or percentage of the combination of the local rates on such shipments. Orator avers that many of the rates established by said defendants were made with reference to the local rates in adjoining States, and for the purpose of compelling the reduction of through rates on the basis of local rates in the States into and through which shipments pass.

And so your orator avers that many of the rates established by the said Railroad Commission of the State of Arkansas, as aforesaid, were made with the intention and for the purpose, and each and all of said rates so established as aforesaid, will have the effect of regulating and fixing inter-state rates on all such classes and commodities, and is therefore an attempt to regulate inter-state rates and effect inter-state commerce, and is in violation of the Constitution and Laws of the United States and an invasion by the defendants of the powers, rights and duties vested exclusively by the Act of Congress in officials of the United States.

(6) Your orator further alleges that it is provided by an Act of the Legislature of said State, approved April 8, 1903, that all
15 persons, companies, or corporations operating any railroad in said State that forms part of a continuous line of railway communication, between points in the State, shall issue through passenger tickets and check baggage through to and from all points on such continuous line of communication at through rates and fares; that all freight and traffic carried wholly within this State to and from stations on lines of continuous carriage shall be way-billed through at through rates and tolls from points of departure to the point of arrival, without being re-billed at junction points; and in the case of car load freights the forwarding carrier shall receive and forward the same in the car or cars in which the freight is tendered and without breaking bulk of packages; that in all cases where there is by physical connection of railroads, a continuous line of railway communication, between stations within this State, whether such stations be on railroads operated by one and the same company or corporation, or on railroads operated by different and independent companies or corporations, it shall be the duty of said Commission to make just and reasonable rates of freight, express and passenger traffic to and from such stations, to be observed by all persons, companies, or corporations operating any railroad or engaged in transporting persons or property as express or freight in this State. That if any two or more connecting lines of railroad in this State shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers or cars over such lines, the Commission shall make the division and shall fix the pro rata part of such charges to be received by each of said connecting lines.

That said Commission, assuming to act under and by virtue of the authority of the provision of the aforesaid statute, by the order
16 adopted by it on June 4, 1908, as aforesaid, attempted to make and put in force through joint rates for the transportation of shipments of merchandise by classes and commod-

ities over two or more lines of railroad, which are not under the same management or control, by adding to the rates prescribed in the schedules prescribed by said Commission for single line or continuous mileage certain differentials, and by fixing a maximum of through joint rates on classes and commodities to be charged by all railroads on shipments between stations in this State. The differentials prescribed on merchandise by classes is as follows:

Less than carloads:

First class	10c.
Second class	8c.
Third class	7c.
Fourth class	6c.
Fifth class	5c.

Carload:

Class A	5c.
Classes B and C	4c.
Classes D and E	3c.

Provided, that when the sum of the rates prescribed for local application is less than the through joint rate ascertained as aforesaid, such sum of rates shall be used as a joint rate, and, further, that the through joint rate shall not in any case exceed the following figures:

Less than carload:

First class	82c.
Second class	79c.
Third class	65c.
Fourth class	74c.
Fifth class	37c.

17 Carloads:

Class A	41c.
Class B	31c.
Class C	27c.
Class D	23c.
Class E	21c.

The joint rates on commodities on two lines of railroad are determined in the same manner, with the proviso that the total through joint rate shall not exceed that charged for a single line haul on such commodities.

The through joint rates for the transportation of shipments of merchandise by classes over three or more lines of railroad are determined by adding the charges on the several railroads or parts of railroads, as prescribed for the respective distances such class merchandise is carried over each line, and deducting from the sum ten

per cent, provided that the through joint rates shall in no case exceed the following:

Less than carload:

First class	92c.
Second class	84c.
Third class	72c.
Fourth class	53c.
Fifth class	42c.

Carloads:

Class A	46c.
Class B	35c.
Class C	31c.
Class D	26c.
Class E	24c.

18 The joint through rates for the transportation of commodities over three or more lines of railroad are determined in the same manner as in the case of merchandise by classes, provided that said rates shall not exceed the commodity rates for 300 miles plus the differential applied to through commodity rates for two lines of railroad and shall not be less than the rates applying for 75 miles. Orator here refers to Sheets 19, 20 and 21 of Exhibit "A" hereto, for a full statement in detail of the through joint rates attempted to be established by and through the aforesaid order of said Commissioners.

Your orator avers that neither the State of Arkansas nor the defendants, acting as the State Railroad Commission of said State, has the power or authority to make contracts for joint through rates, or joint through routing, over different and independent lines of railroad, or to compel separate and independent lines of railroad to enter into contracts for joint rating or routing of freight over separate lines of railroad, or to accomplish the same result by prescribing arbitrary rules for the creation and division of through joint rates on separate lines of railroad; or to make and enforce joint rates between your orator and other connecting lines of railway in said State that the effect of the aforesaid order is to create and establish traffic arrangement between separate and independent lines of railroads in relation to the transportation of merchandise between points on lines of each of said roads, and to compel said railway companies to enter into contract relations with each other without their consent, although the same may be hurtful to their interests. Orator further alleges that the joint through rates prescribed in said order are insufficient to afford any return whatever for the service rendered by the several railroads engaged in the transportation of through freights; that said order is unjust, oppressive, confiscatory, and its effect is to deprive your orator and all
19 other railroad companies operating in said State of their property without due process of law, and will deprive them

of the equal protection of the law in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States.

Sixth. Your orator further represents that by an Act of the Legislature of the State of Arkansas, approved the ninth day of February, 1907, entitled, "An Act to Amend Section 6611 of Kirby's Digest of the Statutes of the State of Arkansas, by Fixing Passenger Rates in this State, and for Other Purposes," it is provided that the maximum sum which any corporation or person operating a line of railroad in this State shall be authorized to charge for carrying each first class passenger over such line within the State shall be fixed at five cents per mile on lines of railroad fifteen miles or less in length, three cents per mile on lines of railroad over fifteen and less than eighty five miles in length, and two cents per mile on all lines of railroad over eighty five miles in length; and for carrying children between the ages of five and twelve years in charge of adults, one half the rates above named, and for such children as are under the age of five years, that no charge whatever shall be made beyond what is collected from the adults having them in charge. It was further provided that said Act should take effect and be in force sixty days after its passage. Said Act was passed for the purpose of amending, and is an amendment to Section 6611 of Kirby's Digest of the Statutes of said State.

Section 6620 of said Digest provides that if any person or corporation mentioned in Section 6611 aforesaid shall charge, demand, take or receive from any person or corporation any greater compensation for transportation of passengers than is therein prescribed, such person or corporation shall forfeit and pay for every such offense a sum not less than $50.00 nor more than $300.00 and costs of suit, including a reasonable attorney's fee to be taxed by the Court, to be recovered in a suit at law in any Court of competent jurisdiction. That any officer, agent or employee of any such person or corporation, who shall knowingly and willfully violate the provisions of the Statute by charging a greater rate than is therein prescribed, shall be liable to the same penalties, to be recovered in the same manner.

That on May 15, 1907, the Defendants, acting as Railroad Commissioners for said State, made and promulgated an order providing that—

"The maximum sum which any corporation, person or association of persons operating a line of railroad in this State shall be authorized to charge and collect for carrying each passenger over such line within the State is fixed at the following rates:

"On lines of railroad fifteen miles or less in length, 5c. per mile.

"On lines of railroad fifteen miles in length and not over eighty five miles in length, 3c. per mile.

"On lines over eighty five miles in length, 2c. per mile.

"And for carrying children in charge of an adult, there may be charged and collected one half the above named rates for such of said children as may be under the age of twelve years and over the age of five years, and for such of said children as may be under the

age of five years, no charge whatever shall be made beyond what is collected for the adults who shall have them in charge."

Prior to the passage of the aforesaid Statute and promulgation of the aforesaid order by the Defendants, your orator and all other railroads in said State operating lines over seventy five miles
21 in length charged three cents per mile for the transportation of adults between all stations on its and their lines of railroad. That notwithstanding it at all times operated its trains in said State with as great a degree of economy as was compatible with the comfort of passengers, safe and efficient service to the public, and the maintenance and preservation of its property as herein before alleged, the gross receipts from carrying passengers within the limits of said State at the rate of three cents per mile aforesaid, after deducting therefrom the cost of conducting such business in the State, including operating expenses and maintenance and fixed charged properly appertaining to said business, were not sufficient to leave any adequate or reasonable profit or return upon the value of the property used in and about said business, or for the service rendered the public.

Orator alleges that the rates fixed and established by the late Act of the Legislature and by the order of said Commission as now in force in said State has caused a large reduction in the rates theretofore prevailing on the transportation of passengers and excess baggage. That it felt constrained, on account of the large number of actions for double damages to which it would become subject under the provisions of the Statutes of said State, and the provisions of said Statutes making the rates, charges, orders, rules, regulations and classifications prescribed by said Commission in actions between private parties and railroad companies conclusive, and denying such companies the right to question or investigate the fairness, reasonableness and legality of such rates, charges, orders, rules, regulations and classifications, in such actions, as well as of the harsh and severe penalties prescribed for the failure and refusal to put in force tariffs of charges and rules regulating railroads prescribed and put
22 in force by said Commissioners, as well as by the penalties specially prescribed for the failure to comply with the provisions of the Act of the Legislature, reducing passenger rates as aforesaid, to reduce its rates in compliance with the provisions of said Statute and the aforesaid order; that said rates have been in force on its lines of railroad in said State since the aforesaid Statute and order took effect, and orator avers that all its earnings from intrastate transportation of freight and passengers in said State during said period have not been sufficient to pay operating expenses and cost of maintenance and fixed charges properly chargeable to said business, and it has been compelled to operate its passenger and freight trains at a loss of revenue. Your orator alleges that the total earnings from the transportation of passengers between stations in the State of Arkansas, during the last half of the year 1907, did not exceed $836,542.20, that the total expense of operation solely incident to said business, including all fixed charges,

was $878,269.84 for the same time; that said period represents the average passenger earnings throughout the entire year.

Seventh. Your orator alleges that the State of Arkansas contains no large cities and very few commercial centers; that a great deal of the jobbing and wholesale trade of said State is inter-state business; that the population is sparce and very small as compared with the mileage of railroads operated in said State; that both freight and passenger business of your orator and of all other railroads operated in said State is light; that the rate of two cents per mile for the carriage of passengers and the freight rates prescribed in the aforesaid orders of the Railroad Commission of said State are unreasonably low, and neither your orator, nor, it is informed, any other line of railroad operating in said State, is able to earn a reasonable compensation for the services rendered either in the car-
23 riage of passengers or freight within said State, after paying the necessary expenses of operating and other expenses necessary and incident to the intra-state business of said State. That while the rates of passenger fare as well as freight rates have been reduced by the Acts of the Legislature of said State, as well as by the orders promulgated by said Commission, the expense of operating and maintaining the railroads, and properties used in connection therewith, in said State has been materially increased by reason of the legislation of said State and the rules, regulations and orders of said Commission. That during the session of the Legislature of 1907, at which the Statute requiring the reduction of one third in the passenger rates was enacted, many statutes imposing burdens and increasing the expense of operating and maintaining railroads were passed. Among such enactments was a law requiring railroads exceeding fifty miles in length to employ three brakemen on freight trains consisting of more than twenty five cars, whereas, previous to that time two brakemen had been employed and were sufficient for the efficient management of freight trains; requiring railroads to drain road beds, to construct foot walks to passenger depots, to equip all locomotives with electric headlights, limiting the hours of service of employees, making the railroads liable for injuries caused by fellow-servants and absolutely liable for damages caused by fire, and numerous special Acts affecting and increasing the expense of operating passenger trains and maintaining depots and station houses. That many of the requirements contained in said Acts were not necessary to the safe and efficient operation of trains. That a large amount of expense has been incurred and will be necessary in making and maintaining the changes provided for in said legislation, without any increase in the revenues by reason thereof. The result of all of which legislation has
24 been greatly to increase the cost of conducting the business of your orator and other persons and corporations engaged in like business in said State. And orator alleges that all the earnings of all its lines of railroad within said State on the business transacted by it in the State are not sufficient to pay the expense of operating properly applicable to said business and afford any adequate or reasonable return on the money invested in said property.

Eighth. Your orator alleges that the lines of road operated by it were constructed under grants of the State of Arkansas, which confer the right to collect reasonable rates of toll, and fare for the transportation of freight and passengers over and upon said railroads, and such as would enable your orator to operate said road profitably. That there grew out of said grants and was necessarily implied therefrom an agreement or contract on the part of the State that your orator should have the right to impose reasonable charges and tolls for the transportation of persons and property.

That the General Assembly of the State of Arkansas, by an Act approved July 23, 1868, passed a general law for the creation and organization of railroad corporations, for the purpose of owning, maintaining and operating railroads in said State, under which Act your orator was incorporated. That said Act among other things provided that—

"The Legislature may when any such railroad (meaning any railroad organized under the provisions of said Act) shall be open for use from time to time alter or reduce rates of toll, fare, freights or other profits upon such road; but the same shall not, without the consent of the corporation, be so reduced as to produce with said profits less than 15 per cent per annum on the capital actually paid in, nor unless an examination of the amounts received and expended, to be made by the Secretary of state, he shall ascertain that the net income derived by the company from all sources for the year then last passed shall have exceeded an annual income of 15 per cent upon the capital of the corporation actually paid in."

Said provision of the Statute is now in force, never having been repealed, and is contained in Kirby's Digest of the Statutes of Arkansas as Section 6590.

Said lines were constructed by your orator and those from whom it acquired and under whom it holds the same, on the faith that the State would in good faith carry out and perform its aforesaid agreement in regard to rates to be charged by railroads in said State as aforesaid, as well as with reference to the annual profits, and that it would not, by direct legislation, or through any agency created by it, impose on the persons and corporations owning and operating said railroad such rules, regulations and tariffs as would deprive them of the right to establish and charge such rates as would be reasonable, just and fair and as would enable it to earn a profit of 15 per centum per annum on the capital actually paid in. Your orator alleges that while it has voluntarily reduced its rates from time to time as the developement of the business upon its lines and the condition of the country would warrant, it has never consented to such reduction of its rates by the State as would reduce its profits annually below the rate provided for in the aforesaid Statute.

Your orator avers that, disregarding its contract and obligation in the premises, the State of Arkansas by and through the aforesaid Act of the Legislature of said State, approved the 9th day of February, 1907, aforesaid, and the orders of the State Railroad Commission, established rates of passenger fare and freight charges,

which do not enable your orator to earn 15 per centum per annum on the capital actually paid in, or in fact sufficient to pay
26 the expense of operating, maintaining and keeping down the fixed charges pertaining to the business of carrying passengers and freight in said State, or on its entire lines of railroad and business conducted therein. That the action of said State in fixing said unreasonable and confiscatory rates, and in depriving your orator by the aforesaid legislation and Acts and orders of said Railroad Commission, of the power to earn a profit of not less than 15 per cent per annum on its capital actually paid in, impairs the obligation of the contract of the State contained in said Statute, as hereinbefore set out, in violation of the provisions of Section 10, of Article 1, of the Constitution of the United States, prohibiting the State from passing any law impairing the obligation of its contract.

Ninth. Your orator represents that by the provisions of the aforesaid Acts of the Legislature of the State of Arkansas, any railroad failing or refusing to put in force any tariff ordered by said Board of Railroad Commissioners, or any of the rules and regulations prescribed by said Commission, is not only liable to a penalty of not less than $500.00 nor more than $3000.00 for each violation, but is also made liable to pay to any person, firm or corporation injured by such violation double the amount of damages sustained by him and all costs, and as a cumulative penalty, any railroad that shall charge, take or receive any greater compensation for the transportation of passengers than the rate prescribed by law shall forfeit and pay for every such offense not less than $50.00 nor more than $300.00, and the cost of suit, including a reasonable attorney's fee to be taxed by the Court; and it is further provided that any officer, agent or employee of any railroad, who shall knowingly and willfully demand, take or receive a greater compensation for the transportation of passengers than the amount allowed by law, shall likewise forfeit not less than $50.00 nor more than $300.00 and cost of suit, including attorney's fee, to be taxed by the
27 Court for each offense. Orator alleges that the penalty and liability imposed by the aforesaid provisions of the statutes are so severe as to constrain persons and corporations subject to the provisions of said allegation to submit thereto, however illegal, rather than take the risk of incurring such enormous liability and penalties, the effect of which would be to utterly bankrupt and destroy them, and cause the persons whose money is invested in such property to forfeit their entire investment. That no prudent officer, agent or employee of any such railroad could afford to take the risk of the penalties and forfeitures imposed on him personally by said statutes. Wherefore your orator and all other persons and corporations operating railroads in said State and subject to the provisions of the aforesaid Statutes, have been coerced into compliance with the aforesaid illegal and confiscatory legislation by said State, and orders made and promulgated by said Railroad Commission, rather than to subject said properties, and the officers, agents and employees employed in and about the operation of the

same, to the great multitude of suits and prosecutions that would have followed the failure or refusal to put said rates in force. But your orator avers that said rates, both as to freight and passengers, can not be continued in effect without irreparable loss to it, and serious and irreparable injury to and destruction of the property, rights and interest of your orator, and of all persons interested in said property as creditors or stockholders of your orator.

Tenth. Your orator further alleges that the penalties prescribed by the Statutes of the State of Arkansas for a violation of the rules and regulations of said Commission, and the rates of freight and passenger fare put in force by said Commission are unreasonable and excessive in amount. That the penalties that would accrue against your orator each day for the violation of the rates pre-

28 scribed by the aforesaid orders of said Commission for the carriage of freight between stations in said State on the basis of the minimum fine prescribed by law, would amount to $— and for the violation of the rates prescribed as aforesaid for carrying passengers within said State on the basis of the minimum fine imposed by the aforesaid Statutes would amount to $—. That said penalties are immoderate and out of proportion to the acts designed to be punished; they are absurd and unreasonable in that they apply without discrimination to a great variety of acts and omissions that are wholly unlike and dissimilar both in regard to the nature of the act done or omitted and its effect upon the rights of the public and of individuals, and said provisions are manifestly designed to operate as a menace to compel unquestioning obedience on the part of railroad companies, their officers, agents and employees to all orders, rules and regulations promulgated by said Commission without regard to their lawfulness, by exposing said companies to such ruinous fines and penalties, and the officers agents and employees of said companies likewise to such severe and ruinous penalties as to deter the said companies and the officers, agents and employees thereof, from resisting on any ground, however harsh or unreasonable the action of said Commission may be or seem, and by deterring all parties from resorting to the Courts for the purpose of contesting the legality of such rules, regulations and rates, for fear of being harassed and oppressed by a multitude of prosecutions and suits during the pendency of such proceeding and of the consequences to them in case they should fail to maintain the ground of contest, notwithstanding that the same may have been instituted in the utmost good faith and for the purpose of testing and judicially determining the validity and legality of such order, rule or regulation. Wherefore, your orator avers that said provisions are discriminative, and deprive your

29 orator and all others in like condiaion, of their property without due process of law, and of the equal protection of the law, and are therefore in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

Said provisions are likewise in violation of Section 9 of Article II of the Constitution of the State of Arkansas, which provides that

no person shall be subject to excessive fines, and that no unusual punishment shall be inflicted.

Eleventh. Your orator further alleges that the defendants, Henry Leigh and George McLean are shippers on your orator's lines of railroad and make frequent shipments of freight between stations situated wholly within said State. Said defendants are also in the habit of traveling on your orator's passenger trains between stations in said State and it alleges and shows that many thousand other citizens and residents of said State are engaged in business in said State, and are large shippers of freight over your orator's lines of railroad between stations in said State, and that large numbers of persons residing in said State are in the habit of traveling on your orator's passenger trains between stations in said State. Orator further alleges that if it shall disregard, violate or refuse to put in force the aforesaid rates prescribed by said Commission for the transportation of freight and passengers, or any or either of said rates, or shall violate or fail to carry into effect any of the rates, charges, orders, rules, regulations and classifications prescribed by said Commission, on the ground that the same is unjust, unfair, unreasonable, confiscatory, and in violation of the Constitution and Laws of the United States, as hereinbefore alleged, said Commission will cause penalty suits to be instituted against it, as authorized by the provisions of the aforesaid statute, through the prose-
30 cuting attorneys of the various judicial districts in said State, through which your orator's lines of railroad extend; that a great number of suits at law for *for* recovery of the penalties for the violation of the numerous rates contained in the schedule shown as the Commission's Standard Freight Distance Tariff No. 3 will be brought; that said suits will be brought against your orator for the violation of each of the rates for the transportation of passengers as well as freight between the many stations on its lines of railroads; that a large number of suits for penalties and double damages will be brought against your orator by the aforesaid defendants who are shippers and patrons of your orator, and others of the same class, involving a very large number of suits in many Counties in said State; that your orator will be required to produce its books and papers in the defense of each of the numerous cases brought by and under the direction of said Commission, and by private shippers and patrons for the purpose of showing that the rates established by said Commission are unreasonable and would be greatly harassed by being compelled to defend such a multitude of suits.

Orator further alleges that the expense involved in the defense of such suits as will be instituted against it in case it refuses to comply with the illegal, unjust and confiscatory rates, rules and regulations of said Commission would be very great, and would involve great and serious loss to your orator without regard to the result of such litigation; that under the provisions of the Statutes hereinbefore referred to, your orator would be precluded from pleading or proving the unreasonableness of said rates in proceedings instituted by private shippers, and judgments would doubtless be recovered in many of said actions, and orator would be com-

pelled, in order to protect its property from levy and sale thereunder, to file numerous supersedeas bonds, by which it would
31 be put to considerable expense and inconvenience; that the question as to whether the rates prescribed by the Commission as aforesaid are unreasonable or could not be properly determined in suits of that character, and that the loss would be sustained by your orator in an attempt to defend such suits would be so serious as to be irreparable. Wherefore, your orator prays leave to sue the aforesaid Defendants as representatives of all of said classes of persons, whether as shippers of freight or as passengers.

Twelfth. Your orator alleges that this cause arises under the Constitution and Laws of the United States, and that the matter in dispute and controversy exceeds, exclusive of interest and costs, the sum and value of two thousand dollars.

Premises considered, for as much as your orator is remediless at law and can only obtain relief in a Court of Equity, where matters of this kind are cognizable, your orator prays:

(1) That the orders of the Railroad Commission of the State of Arkansas, fixing rates and charges for freight transported by your orator within said State, and fixing and establishing joint through freight tariffs on different and independent lines of railroad, and all such rules and regulations affecting and concerning the same and each and every part thereof and each schedule in said orders contained, be set aside and held for naught; that the order of said Commission, made on June 4, 1908, to take effect June 15, 1908, fixing and establishing tariffs and charges on freights transported over your orator's line of railroad between stations situated within said State on classes and commodities, and fixing and establishing joint through rates on independent connecting lines of rail-
32 road, and all rules and regulations affecting and concerning the same, and contained in said order of June 4, 1908, be set aside and held for naught.

(2) That said Act of the Legislature of the State of Arkansas, approved the 9th day of February, 1907, and the orders of the Railroad Commission of said State, establishing and fixing a rate of two cents per mile for the transportation of passengers between stations in said State on your orator's railroad and over lines leased and operated by it in the State, be set aside and held for naught, and that so much of the order made by said Commissioners on June 4, 1908 to take effect June 15, 1908, as relates to the aforesaid passenger rates, and fixes and establishes the same on the basis of two cents per mile, be set aside and held for naught.

(3) That the Defendants, as Railroad Commissioners of the State of Arkansas be restrained and enjoined from putting into force, or taking any step or action whatsoever looking to the putting into force and effect, the aforesaid tariff of charges for the transportation of freight and passengers on your orator's railroad within the State of Arkansas, adopted by it on June 4, 1908, as aforesaid, and that said tariffs, and all rules, regulations and orders made and promulgated by said defendants for the purpose of putting the same into effect be set aside and held for naught.

(4) That the provisions of the aforesaid statutes of the State of Arkansas prescribing penalties against your orator and others in like condition for the failure or refusal to put into force any tariff ordered by the Railroad Commission of said State, or any of the rules and regulations prescribed by said Commission or for charging, taking or receiving any greater compensation for the transportation of passengers than the rate prescribed by law, be declared
33 void and of no force or effect whatsoever, and that said Commissioners and each and every one of them, their successors in office, agents, servants, and employees, be temporarily and permanently restrained, from enforcing or attempting to enforce, the rates, charges, rules and regulations fixed by the orders of said Commission aforesaid respecting the carriage of freight and passengers within the State of Arkansas, or from enforcing or attempting to enforce, through any agency provided in the Statutes of the State of Arkansas, or otherwise, any of the penalties prescribed by the Statutes of said State for failure on the part of your orator to observe any of the aforesaid orders made by said Commission; and that said Commissioners be temporarily and perpetually enjoined and restrained from prosecuting any suit or action, or causing the same to be prosecuted, by any officer or agent of said Commission, or by any officer of the State of Arkansas, or any other person, for the failure to put or keep in effect and to observe the rates of freight and passenger fare and the rules and regulations of said Commission so fixed and established as aforesaid, or from taking any action with the intent and for the purpose of enforcing the provisions of the order made by said Board on May 15, 1907, fixing the rates for the carriage of passengers and freight as aforesaid, or from doing or attempting to do, any act or thing, by way of compliance with, or for the purpose of carrying out, said order, rules and regulations or any part thereof.

(5) That the defendants, Henry Leigh and George McLean and all other persons belonging to the same class, including all patrons of your orator's railroad, either in the shipment of freights between stations on your orator's lines of railrad in said State, or as passengers on said lines between stations in said State, be en-
34 joined and restrained during the pendency of this proceeding, from instituting any suit or suits, action or actions, against your orator for the recovery of any penalties under and by virtue of the provisions of any of the aforesaid Acts of the Legislature of the State of Arkansas, or for the recovery of double damages under and by virtue of the provisions of any of the aforesaid Acts of the Legislature of said State, and upon the final hearing that said Defendants and all other persons belonging to the classes aforesaid, and who are engaged or may be engaged in intrastate shipments of freight on or over your orator's lines of railroad, or may become intrastate passengers thereon, be perpetually enjoined and restrained from instituting any such suits or actions against your orator.

And your orator prays for such other and further relief as may seem meet, and as it may be entitled to.

And may it please your honor to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under

the seal of this Honorable court, directed to the said Robert P. Allen, John W. Crockett and John E. Hampton, constituting the Railroad Commission of the State of Arkansas, Henry Leigh and George McLean, thereby commanding them and each of them on a day certain therein to be named, under certain penalty, to be and appear before this honorable court, and then and there full, true, direct and perfect answer to make to all and singular the premises, but not under oath—answer under oath being expressly waived—and to perform and abide by such order, direction and decree as may be made in the premises. And your orator will ever pray.

MOORE, SMITH & MOORE,
Solicitors for Complainant.

35–91 STATE OF MISSOURI,
City of St. Louis, ss:

J. M. Johnson, being duly sworn, says: He is Vice-President in charge of Traffic, of the St. Louis, Iron Mountain & Southern Railway Company, he has read the foregoing bill of complaint and knows the contents thereof. He further states that all facts alleged in said bill on his personal knowledge are true, and such as are stated upon information he believes to be true.

J. M. JOHNSON.

Subscribed and sworn to before me this the 14th day of July, 1908.

GEORGE C. DONOVAN.
Notary Public.

My Commission expires the 9th day of November, 1911.

Endorsed on back thereof: "Filed and writ issued, July 18, 1908. W. P. Feild, Clerk."

Which Exhibit "A" to Complainant's Bill of Complaint is as follows:

(Omitted in printing per stipulation.)

92 Endorsed: Filed July 18th, 1908. W. P. Feild, Clerk. By W. Presley Feild, D. C.

93 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it remembered that a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the Sixth day of April, Anno Domini, One Thousand Nine Hundred and Eight, at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge presiding and holding said Court, the following proceedings were had, to-wit, on July 25th:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
vs.
ROBERT P. ALLEN et al.

Comes Robert P. Allen, John W. Crockett and John E. Hampton, Railroad Commissioners for the State of Arkansas, by Morris M. Cohn, Esq., their Solicitor, and file herein their Answer.
94 Which Answer is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas. In Chancery.

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
vs.
ROBERT P. ALLEN, JOHN W. CROCKETT, and J. E. HAMPTON, Railroad Commissioners of the State of Arkansas, et al.

To the Honorable Judges of the Circuit Court of the United States for said District:

The Defendants, Robert P. Allen, John W. Crockett and John E. Hampton, as members of and constituting the Railroad Commission of Arkansas, saving and reserving to themselves all manner of objection and exception which they may be entitled to save to the many imperfections and insufficiencies in the bill of complaint, for answer thereto, say:

(1) The Defendants, Robert P. Allen, John W. Crockett and John E. Hampton, admit that they are members of and constitute the Railroad Commission of Arkansas.

Answering the first paragraph of the bill of complaint, they say that it is true that the complainant is a corporation, organized under the laws of the State of Arkansas, with its domicile at the City of Little Rock, in Pulaski County, in said State.

(2) Answering the second paragraph of the bill of complaint, they say that it is true that they reside in the districts there mentioned, and that the Legislature of the State of Arkansas has fixed and established the domicile of said Railroad Commission at the City of Little Rock, in the County of Pulaski in said State; and the Defendants, Henry Leigh and George McLean, therein
95 mentioned, are citizens of the State of Arkansas, and reside in the City of Little Rock, in said District.

(3) Further answering the bill of complaint, the defendants say that, as shown by the report of the complainant filed in the office of said Railroad Commission pursuant to the laws of the State of Arkansas, the St. Louis, Iron Mountain & Southern Railway Company was organized under a special Act of the Legislature of the State of Missouri, approved March 3, 1851: that amendments by

special Acts of the Legislature of the said State were made to the said Act of Incorporation on February 17, 1853, and March 3, 1857. By special Act of the Legislature of Kentucky, approved January 16, 1871, the St. Louis, Iron Mountain & Southern Railway Company was authorized to extend its railroad to the City of Columbus, in the said State. That subsequently, on July 21, 1867, by authority of a general Act of the Legislature of the State of Missouri, approved March 20, 1866, Thomas Allen and associates entered into articles of association for the reorganization of said railroad, under the name of the St. Louis & Iron Mountain Railroad Company, and said articles were filed in the office of the Secretary of State of the said State of Missouri on July 29, 1867. That subsequently, on March 17, 1868, the Legislature of the said State of Missouri authorized the construction of the Arkansas branch of the St. Louis & Iron Mountain Railroad. That the Cairo & Fulton Railroad Co., of Missouri, was organized under the general railroad law of the State of Missouri, by articles of association, September 12, 1853. That this railroad was afterwards sold under foreclosure proceedings. That on April 23, 1872, Thomas Allen and associates reorganized this railroad under the name of the Cairo, Arkansas & Texas Railroad Company, and filed articles of association in the office of the
96 Secretary of State of the State of Missouri, May 21, 1872. That by articles of association dated March 11, 1874, which were filed in the office of the Secretary of State, of the State of Missouri, April 30, 1874, the Cairo, Arkansas & Texas Railroad Company, and the St. Louis & Iron Mountain Railroad Company were consolidated under the name of the St. Louis & Iron Mountain Railroad Company.

That the Cairo & Fulton Railroad Company, of Arkansas, was organized under an Act of the Legislature of the State of Arkansas, approved January 12, 1853; that the consolidated St. Louis & Iron Mountain Railroad Company and the Cairo & Fulton Railroad Company, of Arkansas, were consolidated under the laws of the States of Missouri and Arkansas by articles of association bearing date March 1, 1874, and filed in the office of the Secretary of State of the States of Missouri and Arkansas, respectively, on May 16, and June 2, 1874, the corporate name of said consolidated railroad company being the St. Louis, Iron Mountain & Southern Railway Company; that subsequently the said St. Louis, Iron Mountain & Southern Railway Company became merged with a number of other railroad companies and railroads in the State of Missouri and the said State of Arkansas; that on February 1, 1887, Jay Gould, who had previously purchased the Little Rock, Mississippi River & Texas Railway at foreclosure sale, executed a deed of conveyance thereof to the said St. Louis, Iron Mountain & Southern Railway Company, the said Little Rock, Mississippi River & Texas Railway Company having been formed by the reorganization of the Little Rock, Pine Bluff & New Orleans Railroad Company, and by purchase of the road and franchises of the Mississippi, Ouachita & Red River Railroad Company; and the said com-
plainant reported to the said Railroad Commission that the
97 said Little Rock, Mississippi River & Texas Railway Company had been consolidated by purchase with the said St.

Louis, Iron Mountain & Southern Railway Company under the railroad law of the State of Arkansas as contained in Mansfield's Digest of 1884, and particularly Section 5516 and following Sections.

That the said complainant also reported that by deed dated December 13, 1893, a conveyance was made to it of the railroad, property and franchises owned by the Houston, Central Arkansas & Northern Railway Company, (a company organized under the general railroad law of the State of Arkansas, June 1, 1890), the constructed road so acquired extending from McGehee Junction, in the County of Desha, State of Arkansas, in a southwesterly direction through the Counties of Desha, Chicot, Drew and Ashley, in the State of Arkansas and beyond.

A conveyance to the St. Louis, Iron Mountain & Southern Railway Company was also reported by the said complainant as aforesaid to have been made to it by deed dated April 13, 1906, of the railroad property and franchises of the Little Rock & Fort Smith Railroad, a railway running from Argenta, Arkansas, to Fort Smith, Arkansas, through the said State of Arkansas. And, in the said report, the said complainant stated that consolidation of the said Little Rock & Fort Smith Railroad Company had been had with it under the provision of said Mansfield's Digest of the laws of the State of Arkansas, and particularly said Section 5516 and following Sections.

(4) Answering paragraph marked 3d in the complaint, the Defendants say that it is true that the said Railroad Commission was created by the Act of March 11, 1899, as set forth in said paragraph, but that said paragraph has omitted to state that suits for damages and costs sustained by any person, firm or corporation under
98 the provisions of the Act referred to had to be instituted within a year from the accrual of the right, or same became barred.

But the Defendants deny that the effect of the provisions of said Act of March 11, 1899, was to deny to the complainant and to all other persons and corporations operating railroads in said State the right to a judicial investigation of the validity and reasonableness of the rates, rules, regulations and classifications prescribed by said Commission; or that it deprived complainant and all others in like condition due process of law, contrary to the provisions of Section 1, of the Fourteenth Amendment to the Constitution of the United States. For, they say that by the terms of Sections 6813 and 6814, of Kirby's Digest of the laws of the State of Arkansas, as construed by the Supreme Court of Arkansas, the rates, rules, regulations and classifications referred to have only prima facie effect, and they aver that this did not amount to a deprivation of due process of law within the meaning of Section 1, of the Fourteenth Amendment to the Constitution of the United States.

(5) Answering paragraph marked 4th of the complaint, Defendants say that it is true that Standard Freight Distance Tariff No. 3 was adopted in lieu of all preceding tariffs on June 15, 1908, but they aver that said Standard Freight Distance Tariff No. 3 was substantially similar to Standard Freight Distance Tariff No. 2, adopted by said Railroad Commission on the 15th day of July, 1904; and they also aver that the Standard Freight Distance Tariff No. 2 was a repe-

tition in substance of the first Standard Freight Distance Tariff adopted by the said Railroad Commission on April 10, 1900. Defendants say at different times during the history of said Railroad Commission technical questions were raised as to whether cer-
99 tain items were faithfully adjusted, and it was necessary to dispose of such matters by rulings or construction. This being found unsatisfactory, when Standard Freight Distance Tariff No. 3 was issued, the said Railroad Commission gave notice that it would take up, at the meeting of June 4, 1908, the question of adopting it as a whole. It was formally adopted and thus disposed of any inadvertent discrepancies which had crept into the compilations previously. And the defendants aver that there is no substantial difference between the freight rates adopted by the said Standard Freight Distance Tariff No. 3 and those first put into effect on April 10, 1900.

(6) Defendants, answering the paragraph marked 5th, of the bill of complaint, deny that the charges and rates prescribed in the said Standard Freight Distance Tariff No. 3, as well as the preceding Tariff No. 2, applying on commodities and classes, or otherwise, were, or are, in any respect unreasonable, unjust, oppressive, discriminatory, confiscatory or void, either in respect to said order as a whole or in respect to each and every rate, charge, tariff, schedule, classification, rule or regulation separately considered. And they say they don't know how much the railroad equipment, property and franchises owned and used by complainant in operating its said road in said State represents, but they deny that the sum of $21,353,210.00 correctly represents the said investment. They deny that complainant has exercised as great a degree of economy in the use and operation of said property as was compatible with the interests of the public and with safe and efficient service to the public, or, that it only employed such officers, agents or employees, or expended only such amounts in the maintenance and repair of its road-bed, tracks and stations, or for new equipment of engines, cars or other ap-
100 pliances necessary to the operation of its road and the maintenance of said property, as was necessary and essential to a due and proper operation of its trains, or to the maintenance of said property with due regard to its preservation and the safety of the public.

They deny that no unreasonable salaries or wages have been or are now being paid to any of its officers or employees. They deny that complainant has practiced all reasonable and proper economy in the operation and maintenance of its railroad, and they deny that the operation of said road, if properly and economically conducted, would not yield a profit exceeding fifteen per cent at the rates prescribed in said Tariff. They deny that said rates do not and will not yield a just and reasonable return upon the value of complainant's property used in said service, whether in respect to the money invested in said property, or the service rendered. They deny that the total earnings of the complainant from its intrastate business in the transportation of freight in the State of Arkansas, during the year 1907, did not exceed the sum of $640,284.17. They aver that the condition of affairs in the United States in the year of 1907, finan-

cially and commercially, should form no criterion for other years, because they say that conditions were very much depressed in the concluding and busy months of said year by reason of a panic which stopped a great many industries and curtailed business of all kinds, including transportation by railroad. They deny that the expense of operation solely incident to intrastate business, and the fixed charges solely incident and chargeable to the intrastate transportation of freight was $784,602.14. They deny that the total earnings of the complainant's property from the transportation of freight
101 wholly within the State of Arkansas is not and will not be sufficient, under the rates on classes and commodities prescribed in the said tariff, — pay operating expenses, charges for maintenance, taxes and other necessary fixed charges appertaining to said business, and yield any return by way of compensation for the service rendered by complainant. And they deny that the effect of such rates is and will be to prevent complainant from receiving any returns or profit for the service rendered by it to the public, or will deprive it of its property without due process of law, or will deny it the equal protection of the law.

(7) Defendants, answering the second part of the paragraph marked 5th of the complaint, admit that coal fields are situated as stated therein, and that coal mined in said counties is shipped from the stations mentioned therein, and that commodity rates on coal are as stated therein, but they deny that the said rates, either as a whole or otherwise, do not pay the cost of service, including the terminal service, or, are in any respect unreasonable, unjust or confiscatory. They admit that some of the coal shipped from the aforesaid stations is transported over connecting lines of railroad, but they deny that a large part is. They say on information and belief that a very small part of said coal was transported over connecting lines of railroad. And, they further aver that if the rates prescribed, applied, whether said commodity was shipped over one or more than one railroad, under the regulations adopted by them, there was nothing unusual or unjust about it; that such rates were fair and remunerative, and that complainant never heretofore complained to the Commission by any specific method of complaint wherein it set forth that the rates were confiscatory, or asked the said
102 Railroad Commission to increase said rates, whether applicable to hauls that required the services of more than one carrier, or otherwise. They deny the allegations in said part of said complaint that any one of said rates was discriminatory or did not afford to the said lines, or either of them, a fair, reasonable, or just compensation for the service rendered in transporting said products.

(8) Answering the part numbered 3 of said paragraph marked 5th, Defendants say that they do not know how large a proportion of the entire tonnage transported over complainant's lines of railway originating in Arkansas consist- of timber and timber products, but they deny that at least 90 per cent of said tonnage was shipped from points in said State to points in other States, or was interstate commerce. They are advised that it is not material for them to reply to that part of the said complaint which states the custom

vailing between shippers and the railroad companies in the State of concentrating rough lumber at milling points. But they deny that on April 1, 1907, or at any other time, they recognized the said practice and for the purpose of regulating the same made an order that the following rates should apply on the shipment of rough lumber, staves, flitches, bolts and logs in car loads between all points in Arkansas set forth in said complaint. They admit that said rates were made upon the condition expressed in the order that the manufactured product should be reshipped over the same line bringing in the rough material, but they deny that such shipment contemplated an interstate shipment or a shipment beyond the limits of the State, or that it was an attempt in any manner to control shipments beyond the State. They deny that at any time any rate established by them was published or had the effect of operating as a
103 rate applicable to interstate commerce. And they deny that any order made by them in relation to the rate of transportation for lumber in the rough or otherwise was made with the intent and purpose of establishing, regulating or fixing interstate rates on such material or commodities by any device, though they admit that the rates established from the point of origin of rough material, to the point of concentration for milling purposes was based upon the custom of railroad companies to recognize the somewhat cheaper rates from the point of origin to the place of concentration, in consideration of their obtaining the whole haul. But the defendants deny that there is any universal practice prevailing among shippers and railroad companies in said State, where the timber is situated at a distance from the mills, to have it transported by rail and concentrated at milling points for the purpose of being converted into lumber and other products, and take the prevailing rate under interstate shipments from the point at which the shipment of rough material originated in said State to the destination of the milled product in other States. They deny that there is any milling privilege in transit recognized or countenanced by them, which is an incident of interstate movement, or affects the interstate character of shipments of lumber. They deny that the aforesaid rates are unreasonable or oppressive, or that they do not afford the carrier any compensation whatever for the service rendered in connection with the transportation of said commodities, or are confiscatory, or take the property of complainant or other carriers in said State without compensation, or are in violation of Section 1 of the Fourteenth Amend-
ment to the Constitution of the United States prohibiting the
104 taking of property without due process of law and without compensation, or denying to any person the equal protection of the law.

(9) Answering the part numbered 4 of the paragraph marked 5th in the complaint, defendants say that the rates set out therein are correctly stated, but that the rates are flat or local rates, and have no reference to any interstate shipments whatever; that the said defendants, as such Railroad Commission, have not at any time adopted any custom of concentrating cotton at compression points

for the purpose of having the same compressed and transported outside of the State of Arkansas; that they have not made any regutions in reference to any such custom, but have confined themselves to making flat rates for delivery of cotton at points in the said State of Arkansas. They are advised that it is not necessary for them to answer that part of said complaint that describes the manner in which cotton is concentrated at compression points. And they deny that the order copied by the complainant in said part of its complaint, in any way, attempts to regulate interstate commerce; that no attempt was made by the said Railroad Commission, by anything recited in the said order, nor has it ever taken any action which could be construed as intending to affect the transportation of cotton from a point in the State of Arkansas to a point without the State of Arkansas, which during the transportation, was unloaded at a compress and put into compressed form instead of an uncompressed form. And they deny that the flat rates so made in any manner conflict with the jurisdiction of the Interstate Commerce Commission of the United States, or with the movement of cotton, or any part thereof,
105 which has been treated and recognized by the Interstate Commerce Commission as interstate commerce. They deny that there was any direct or intentional interference with interstate commerce, either as regards the rates or regulations in reference to the transportation of said cotton. They deny, therefore, that the said rates were unlawful and void, and they also deny that they were unreasonable, unjust or oppressive, or did not afford any profit to the carriers handling the same, or are confiscatory, or are in violation of the aforesaid provisions of the Fourteenth Amendment to the Constitution of the United States.

(10) Answering that part of paragraph marked 5th, which is numbered 5, Defendants admit that the complainant owns and controls the lines of railroad mentioned in said part of its complaint but they deny that the said roads are operated as a unit. They admit that a very large amount of interstate traffic passes over the said roads and each of them. They deny that the local rates in the several states in which and through which said lines pass enter to a very large extent and have a controlling influence on the through rates charged on interstate commerce. They aver that all local rates established by the said Railroad Commission are within the province of the said Commission, and have reference solely to intrastate commerce; that the said Railroad Commission of the said State of Arkansas has had nothing to do with through rates applying to interstate commerce on the lines of the said complainant or any other railroad company. They deny that the matters alleged in said part of said complaint, as far as they seek to show that the local rates made by defendants enter into through rates made by the complainant in interstate traffic, are material. They deny that, by reason of any of
106 the matters set forth in said part of said complaint, the rates established by said Railroad Commission were made with the intention and for the purpose, or that each and all of said rates so established will have the effect of regulating and fixing in-

terstate rates on all such classes and commodities, or that the same amount to an attempt to regulate interstate rates or affect interstate commerce, or are in violation of the Constitution of the United States, or are an invasion by the Defendants of the powers, rights or duties vested exclusively by the Acts of Congress in officials of the United States.

(11) Answering that part of paragraph 5th, which is numbered 6, Defendants say that by the Act of April 8th, 1903, passed by the General Assembly of the State of Arkansas, the said Railroad Commission was invested with the power to establish joint rates and to provide for continuous carriage; that they do not know whether the terms of the said Act are correctly copied in the said part of said complaint or not. They admit that they have assumed to act under the terms of the Act, and that they have put in force joint rates, and that the rates are correctly stated in said part of said complaint. They aver that prior to the enactment of the said Act of the Legislature, the said Commission did not have the power to deal with continuous transportation and joint rates, and that the said Act was passed for the purpose of enabling the said Commission to deal with the matter, which was necessary to the protection of the shippers of the State of Arkansas; that prior to the enactment of the said Act, there were great evils growing out of the practice of the railroad companies in said State, including that of the complainant, whereby a haul that was really continuous was split up into fragments over the
107 different lines which were formally described as independent lines, though all under one management and different local rates over each of the lines was applied to the great damage of numerous shippers in the said State; that it was deemed to be just and proper by the Legislature of the State of Arkansas, to correct this practice by passing and to provide a method of joint rates and joint routes that should be just to the railroads of said State as well as to the shippers. So, the said Act was passed by the Legislature of Arkansas, at the time stated. That the rates so established by Defendants were established after careful inquiry and proper hearing of the railroad companies and other parties concerned; that the said complainant has never filed any petition before the said Railroad Commission, complaining of the said joint rates so established, or any other orders relating to joint traffic established by the said Railroad Commission. They say, as they are advised, that the said law was within the proper province of the Legislature of the said State of Arkansas, and they deny that the said joint rates are insufficient to afford any return whatever for the service rendered by the several railroads engaged in the transportation of through freight, or that said order is unjust, oppressive or confiscatory, or that its effect would be to deprive complainant or any other railroad company, operating in said State of their property without due process of law, or will deprive them of the equal protection of the laws in violation of any provision of the Fourteenth Amendment to the Constitution of the United States.

(12) Answering paragraph marked 6th, Defendants admit the

passage of the Act of February 9, 1907, referred to in said paragraph, and admit the provisions of Section 6620 of Kirby's Digest
108 of the Laws of the State of Arkansas. They admit that the said Railroad Commission on May 15, 1907, made the order mentioned in the said paragraph, but they deny that there was any necessity for the order or that it worked any damage or detriment to the said complainant. They say, upon information and belief, that the railroad companies were in the habit of charging three cents a mile on lines seventy five miles in length prior to the enactment of said laws, but they deny that the said three cents per mile, after deducting therefrom the cost of conducting said business in said State, the actual operating expenses and maintenance and fixed charged principally appertaining to said business, were not sufficient to yield adequate and reasonable profits or returns upon the value of the property used in and about said business, or for the service rendered the public.

They aver that the traffic in the said State of Arkansas, as they are informed and believe, by reason of the reduction in the rate from three to two cents has increased to such an extent that the said complainant was not in any manner injured thereby, and that it yielded a large enough revenue to leave a considerable profit to the said complainant, unless it was unreasonable and extravagant in the management and operation of its road, or demanded profits upon fictitious values. Defendants deny that the complainant felt constrained to abide by the provisions of the Statutes of said State of Arkansas by reason of any of the matters alleged by it in said part of its complaint. They deny that any Statutes of said State made any rates, charges, orders, rules, regulations or classifications prescribed
109 by said Commission in actions between private parties and railroad companies conclusive. They deny that such companies were denied the right by any Statute of the State of Arkansas to question or investigate the fairness or reasonableness or legality of any rates, charges, orders, rules, regulations or classifications. They deny that there were any harsh or severe penalties prescribed for the failure or refusal to put in force tariffs of charges or rules regulating railroads prescribed and put in force by said Commission. They deny that there was anything unusual about the penalties prescribed for the failure to comply with the provisions of the Act reducing passenger fares. They admit that said two cent rate has been in force on complainant's lines of railroad in said State since the aforesaid Statute and order took effect, and they say that the said complainant never heretofore made any complaint on account thereof. And they deny that the earnings from intrastate transportation of freight and passengers in said State during any period have not been sufficient to pay operating expenses and the cost of maintenance and fixed charges properly chargeable to said business, or that it has been compelled to operate its freight and passenger trains at a loss of revenue. They deny that the total earnings from the transportation of passengers between stations in the State of Arkansas, during the last half of the year 1907 did not exceed $836,542.20, or that the total expense of operation solely incident to said business, including all fixed charges except interest charges, was $878,269.84 for the same

period, or that said period represents the average earnings through the entire year. They aver that during the latter part of the year 1907
110 a monetary and commercial panic prostrated all industries in the United States, including the State of Arkansas, and that by reason of this fact the business of transporting passengers and freight was very much reduced on all lines of railroad throughout the United States and in the State of Arkansas, and that by reason of this fact the earnings from that source in the said part of the year 1907 could not be taken as a criterion.

(13) Answering the paragraph marked 7th of the complaint, said Defendants say that they are unable to understand what is meant by the allegation that the State of Arkansas contains no large cities and very few commercial centers. They admit that a great deal of the jobbing and wholesale trade of said State is interstate business, and they say that the interstate feature of the business is for the most part confined to shipments from the eastern seaboard from the north and from the south to the whole-sale jobbers of the State. They deny that the population is sparse and very small as compared with the mileage of railroads operating in the State, or that either the freight or passenger business of complainant and of all other railroads operating in said State is light, or that the rate of two cents per mile for the carriage of passengers and the freight rates prescribed in any orders of the Railroad Commission of said State are unreasonably low. They deny that neither complaint nor any other line of railway operated in said State is able to earn a reasonable compensation for the service rendered in the carriage of passengers or freight within said State, after paying the necessary expenses of operating and other expenses necessary and incident to the intrastate business in said State.

They deny that the expense of operating and maintaining the railroads and properties of the complainant in said State has
111 been materially increased by reason of the legislation of said State or the rules, regulations or orders of said Railroad Commission. They deny that during the session of the Legislature, at which the Statute requiring the reduction of one third in the passenger rate was enacted, many statutes imposing burdens and increasing the expense of operating and maintaining the railroads were passed, and they say that whatever laws were passed were rendered necessary by evils and necessities which grew up with the increased population in the said State and the indifference of the complainant and other railroad companies for the lives of brakemen. They deny that many of the requirements contained in the said Acts were not necessary to the safe and efficient operation of trains, or that a large amount of expense has been incurred or will be necessary in making and maintaining the changes provided for in such legislation without any increase in the revenue by reason thereof. They deny that the said legislation, as construed by the Supreme Court of the said State, will greatly increase the cost of conducting the business of complainant or other persons or corporations engaged in like business in said State. They deny that all the earnings of all its lines of railroad within said State on the

business transacted by it in the State are not sufficient to pay the expense of operating principally applicable to said business, or that they do not afford any adequate or reasonable returns on the money invested in said property.

(14) Answering the paragraph marked 8th of the complaint, they admit that the lines of railroad operated by complainant were constructed under grants of the State of Arkansas, but deny that the said complainant had any other right to collect tolls than
112 was implied in the organization of said railroad company. They admit that the said complainant was entitled to a return upon the fair value of its investment over and above the expense of operating and maintaining it, but they deny that the complainant can include in the yearly expense of operation and maintenance expenditures made for permanent improvements or those matters that are in the nature of permanent improvements. They deny that there grew out of said grants, and was necessarily implied therefrom, any other agreement or contract than has just been stated. They admit that the General Assembly of the State of Arkansas on July 23, 1868, passed a general law for the creation and organization of railroad corporations, and that the section which is still written in Kirby's Digest of the Statutes of Arkansas, and known as Section 6590, was contained therein. But they allege that at the time the said Act was passed, there was a provision in the then existing Constitution of the State of Arkansas, Art. V, Sec. 48, Constitution of 1868 of said State, which provided:

"That the General Assembly shall pass no special Act conferring corporate powers. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed," said Section applying to railroad corporations. But subsequently to-wit: on the 30th of October, 1874, a new Constitution was adopted by Art. XII, Sec. 6, of which it was provided:

"That corporations may be formed under general laws, which laws may, from time to time, be altered or repealed. The General Assembly shall have the power to alter, revoke, or annul any charter of incorporation now existing and revokable at the adoption of this Constitution, or any that may hereafter be created, when-
113 ever, in their opinion, it may be injurious to the citizens of this State, in such manner, however, that no injustice shall be done to the incorporators."

That whatever rights accrued to any railroad companies organized under either of said Acts were taken subject to the right of the General Assembly of the State of Arkansas to alter or repeal the same; and that subsequently, by the provisions of the Act of March 11, 1899, and Acts supplementary thereto, of the General Assembly of the State of Arkansas, the Railroad Commission was invested with power to fix the reasonable rates for all railroad companies, and that it adopted the rates which have been heretofore mentioned, pursuant to the authority vested in said Commission by the Acts of the General Assembly aforesaid. And these Defendants deny that the said Section 6590 of Kirby's Digest is in force and effect. They deny that the complainant's lines of railroad, or any of those

which it acquired and under whom it holds, were constructed on the faith that the State would in good faith carry out and perform any agreement in regard to rates to be charged by railroads in said State, either with reference to annual profits or otherwise. They deny that upon the pretended faith of said provision of Kirby's Digest, or any other provision of the laws of the State of Arkansas, the General Assembly agreed with the complainant or otherwise that it would not, by direct legislation, or through any agency created by it, impose on the persons and corporations owning and operating said railroads, rules, regulations or tariffs as would deprive them of a profit of fifteen per cent per annum on the capital actually paid in. They deny that complainant has voluntarily reduced its rates from time to time as the development of the business
114 of the lines and the condition of the country would warrant and demand; they say that when the rates were made which it now complains of, it made no complaint thereof to the Railroad Commission of Arkansas, in order to have the matter inquired of and corrected, if any complaint it had, which they deny. They deny that the complainant is not able to earn fifteen per cent per annum on the capital actually paid in by reason of the Act of February 9, 1907, or any orders of the Railroad Commission of said State. They deny that the action of said State in fixing said rates was unreasonable or confiscatory, or that it deprived complainant by any legislation or Acts, or orders of said Railroad Commission of the power to earn a profit of not less than fifteen per cent per annum on capital paid in. They deny that there was any impairment of any obligation of any contract which the State entered into with said complainant in conflict with any provision of the Constitution of the United States.

(15) For answer to the paragraph marked 9th of the complaint, said Defendants say that no penalty imposed by any provision of any legislation of the Legislature of the State of Arkansas applies, except where the act of wrong-doing is done by the complainant. And they aver that the occasions on which the provisions of said Statutes of the State of Arkansas were disregarded by the said complainant and the occasions when its action was oppressive and harmful to shippers and other persons in the said State of Arkansas were so numerous and repeated and became so intolerable and unbearable that the Genehal Assembly found it necessary to attach pen-
115 alties of greater or lesser size to enactments and requirements of the laws of said State in order to obtain an observance thereof by the said complainant and other railroad companies in said State of Arkansas; and if the said complainant and other railroad companies had shown a disposition to act fairly with the shippers and other persons in the State of Arkansas, such enactments would not have been passed; that there is no way that they know, nor of which they have been advised, by which a railroad company can be induced to carry out its obligations except by the infliction of penalties and that if some times these penalties are severe it is because in the wisdom of the Legislature of the State a small penalty would be disregarded. They deny that the penalties and liabilities imposed

by any provision of any Statute are so severe as to constrain persons and corporations subject to the provisions of said legislation to submit thereto, however illegal, rather than take the risk of incurring such pretended enormous liabilities and penalties. They deny that the effect of these would be to utterly bankrupt and destroy said complainant or any other railroad company, or cause the persons whose money is invested in such property to forfeit their entire investment. They say that the complainant has not hesitated to disregard the law whenever it saw fit to do so and contest its rights before the Courts of the State of Arkansas, and whenever it was in the right the Courts of Arkansas have protected it as disclosed by decisions under the Statutes enacted by the last General Assembly of the State of Arkansas. They deny that no private officer, agent or employee of any such railroad could afford to take the risk of the penalties and forfeitures imposed upon him personally by said Statutes. They deny that the complainant and all other persons and corporations operating railroads in said State subject to
116 the provisions of the aforesaid Statutes have been coerced into compliance with any illegal or confiscatory legislation by said State or orders made or promulgated by said Railroad Commission, rather than to subject said property or the officers, agents or employees employed in and about the operation of the same, to a great multitude of suits or prosecutions that would have followed the failure or refusal to put such rates in force. And they deny that the said rates, both as to freight and passenger can not be continued in effect without irreparable loss to the complainant or serious or irreparable injury to and destruction of the property, rights and interests of the complainant and of all persons interested in said property as creditors or stockholders.

(16) And for answer to the paragraph marked 10th of the complaint, said Defendants say that it is not true that the penalties prescribed by the Statutes of the State of Arkansas for the violation of the rules and regulaions of said Commission, and the rates of freight and passenger fare put in force by said Commission, are unreasonable and excessive in amount. They aver that they have been advised that it is not a ground of complaint against the laws of the State of Arkansas that a party has been a frequent and persistent offender, and because of this fact the penalties he may have incurred may aggregate a considerable sum. And they have been advised and aver that if accumulated penalties are incurred on any account by an offender of the said laws, it is due to a disposition of the person to frequently offend. And they have also been advised and aver that it is not an excuse to an offender that he has a constitutional disposition to disregard the law and commit offenses prohibited by the laws of the State under which he exists and does business.
117 They deny that the said penalties were immoderate or out of proportion of the acts designed to be punished. They deny that they are absurd or unreasonable in that they apply without discrimination to a great variety of acts that are wholly unlike and dissimilar, both in regard to the nature of the act done or omitted, and in the effect thereof upon the rights of the public and individ-

uals. They deny that any provisions of the Statutes are designed to operate as a menace to compel unquestioning obedience on the part of the railroad companies, their officers, agents and employees, to all orders, rules and regulations promulgated by said Commission without regard to their unlawfulness, by exposing said companies to such ruinous fines and penalties, and the officers, agents and employees of said companies likewise to such severe and ruinous penalties, as to deter said companies and the officers, agents and employees thereof from resisting on any ground, however harsh or unreasonable, the action of said Commission may be or seem, or for the purpose of deterring any parties from resorting to the Courts for the purpose of testing the legality of any rules, regulations and rates for fear of being harassed and oppressed by a multitude of prosecutions and suits during the pendency of such decision, or because of the consequence to them in case they should fail to maintain the ground of contest. And they deny that any of said provisions were discriminative or deprived complainant, and all others in like condition, of their property without due process of law or the equal protection of the law, or imposed unreasonable fines or unusual punishment, within the meaning of the Constitution of the United States or of the State of Arkansas.

(17) For answer to the said paragraph marked 9th and 10th of the complaint and also some of the preceding para-
118 graphs of the said complaint, in which an effort is made to maintain a bill in equity for the purpose of testing the constitutionality of the laws of the State of Arkansas, applicable to railroads and railroad rates, without reference to any existing and actual cause of complaint, these Defendants aver, as they are advised, that such matters are not within the jurisdiction of a Court of Equity and do not present a case for equitable relief.

(18) For answer to paragraph marked 11th of the said complaint, said Defendants say they do not know and are not advised whether Henry Leigh or George McLean, their co-defendants, are in the habit of travelling on plaintiff's trains or not, nor whether they are large shippers of freight on the lines of railroad of the complainant, but they admit that a large number of persons residing in the said State are in the habit of travelling on complainant's passenger trains between stations in the State. They deny that if the complainant shall disregard, violate or refuse to put into force the aforesaid rates prescribed by said Commission for the transportation of freight and passengers, or any or either of said roads, or shall violate or fail to carry into effect any of the rates, charges, orders, rules, regulations or classifications prescribed by said Commission on the ground that the same are unjust or unfair or unreasonable or confiscatory or in violation of the Constitution or laws of the United States, that the said Commission will cause penalty suits to be instituted against it as authorized by the provisions of the aforesaid statutes through the prosecuting attorneys of the various judicial districts in the State. They deny that
119 at present a great number of suits at law for the recovery of penalties for any prospective violation of rates contained

in schedule known as Standard Freight Distance Tariff No. 3, are in contemplation. They deny that any suits will be brought against complainant for the violation of each of the rates for the transportation of passengers as well as freight between the many stations on its lines of railroad, or that any large number of suits for penalties or double damages will be brought against complainant by these defendants or by any of Defenadnts who are shippers and patrons of complainant and others of the same class involving a large number of suits in many counties in said State. But they admit that if suits are brought it may be that the complainant will be ordered to produce its books and papers in the defense of such cases, but no more so than other persons whose defense depends upon books of account. They deny that the said complainant has been afflicted with suits for acts of wrongdoing done by it to shippers and other residents within the said State of Arkansas, but aver on the contrary that the disposition of the people of said State and of the said Railroad Commission has been to overlook most of the acts of wrong, if not nearly all the acts of wrong done by said complainant, except in instances where the wrongdoing of the said complainant was of so aggravating a character and involving such gross discriminations in favor of its own coal mines as to justify action upon the part of the said Railroad Commission. And they say that if the said Commission ever had to institute suits, they were finally decided in favor of the contention of the said Railroad Commission. And they further say that in all cases where the
120 Acts of the General Assembly of the State of Arkansas came up for consideration relating to the duties of common carriers by rail the Acts have been so construed as to give the said common carriers the benefit of any reasonable excuse they had for not complying with said provisions of the Statutes. They deny that any improper expense would be entailed by the said complainant by reason of the enforcement of any of the said rates, rules or regulations of said Commission, or that it would be in any manner great or involve any great or serious loss to complainant. And they say that if the complainant is correct in saying that it would be precluded from pleading or proving the unreasonableness of said rates and proceedings instituted by private shippers it could correct the same by testing the reasonableness thereof in a direct proceeding had for that purpose. But they say, as they have heretofore said, that by the provisions of the Statutes of Arkansas, the rates fixed by said Railroad Commission are not conclusive; that it can be shown in defense thereto that they are unjust, and the only effect they have is that they are taken to be prima facie binding until they are shown to be unreasonable and, for that reason, unenforceable. They deny that the question as to whether the rates prescribed by the Commission are reasonable or not could not be properly determined in a suit of that character, or that the loss sustained by complainant in an attempt to defend such suits would be serious or would be irreparable.

And having answered, these Defendants ask that the complaint be dismissed and that they be permitted to go hence with their costs.

WILLIAM F. KIRBY,
Attorney General.

121 ROSE, HEMINGWAY, CANTRELL & LOUGHBOROUGH,
MORRIS M. COHN,
Sol's for Said Defendants,

STATE OF ARKANSAS,
County of Pulaski, ss:

John E. Hampton, one of the Defendants herein, being duly sworn, says that the matters and things set out in the foregoing Answer as being based on personal knowledge are true, and that the matters and things set out as being upon information, he believes to be true.

JOHN E. HAMPTON.

Subscribed and sworn to before me this 25 day of July, 1908.
[SEAL.] NOEL LOEB,
Notary Public.

My Commission Expires Jan. 6, 1910.

Endorsed on back threof: "Filed Jul- 25, 1908. W. P. Feild, Clerk."

122 And on July 31, 1908, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
vs.
ROBERT P. ALLEN et al.

Now on this day comes the complainant by its solicitors and come the Defendants by their Soli-tors and thereupon the hearing of complainant's application for temporary injunction is continued and said application is set for further hearing August 31, 1908, before the undersigned Circuit Judge at Chambers, at St. Paul, Minn., and it is thereupon ordered that the complainants serve the solicitors of the Defendants with copies of affidavits and exhibits to be used by the complainant at said hearing on or before August 8, 1908; that the Defendants serve the complainant's solicitors with all affidavits and exhibits to be used by them at said hearing on or before August 24th, 1908, and that complainant serve Defendants' solicitors with any rebutting affidavits and exhibits that they intend to use at said hearing on or before August 29, 1908.

Done at St. Paul, Minn., July 28, 1908.

(Signed) WILLIS VAN DEVANTER,
Circuit Judge.

And on August 28, 1908, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
vs.
ROBERT P. ALLEN et al., &c.

Come the Defendants by William F. Kirby, Morris M. Cohn, Rose, Hemingway, Cantrell & Loughborough, Esqs., their
123 solicitors and file herein the affidavits with exhibits thereto of F. F. Wharton F. Bache, J. B. Allen, R. T. Brook, T. J. Gay, T. B. Jacobs, W. R. Duly, J. E. Hampton, James L. Jones, A. R. Bragg, George R. Brown, J. T. Jarrell, James J. Mandlebaum, S. P. Scott, C. F. Edrington, A. D. Allen, W. W. Dickinson, Fred L. LaGrave, A. B. Alexander, Guy V. Swaim and F. W. Boltz.

And on September 3, 1908, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
vs.
ROBERT P. ALLEN, JOHN W. CROCKETT AND JOHN E. HAMPTON, Railroad Commissioners of the State of Arkansas, Henry Leigh and George McLean.

This cause came on to be heard on the motion of the complainant for a temporary restraining order, and after the submission of the proof, was argued by counsel; and now, upon consideration thereof, it is ordered as follows:

That as to the complainant, all the rates prescribed by the Defendants, the Railroad Commissioners of the State of Arkansas, for transporting and carrying intrastate freights in said State in Standard Freight Distance Tariff No. 3, which was issued by the orders of said Commissioners, which took effect on June 15th, 1908, and all amendments and supplements thereto, be and are hereby suspended and the enforcement of each and all thereof be and the same is hereby restrained and enjoined until the further order of Court.

It is further ordered that the enforcement of the two cents per mile rate prescribed in an Act of the Legislature of the State
124 of Arkansas, approved February 9th, 1907, entitled, "An Act to Amend Section 6611 of Kirby's Digest of the Statutes of Arkansas, by fixing passenger rates in this State and for other purposes," and also prescribed in the order made by the Defendants, the Railroad Commissioners of the State of Arkansas, on May 15th, 1907, putting in force the rates prescribed by the aforesaid Statute be and the same are hereby suspended and restrained as to the complainant herein until the further order of the Court.

It is further ordered that no suit or suits, action or actions, shall at any time be instituted or maintained against the complainant, its officers, agents and employees by any of the defendants for or on account of its failure to continue and keep in force any of the aforesaid inhibited rates, during the time this order shall continue in force, and that the defendants, the Railroad Commissioners of the State of Arkansas, be and they are hereby enjoined from at any time instituting or prosecuting any suit or action as aforesaid or causing the same to be instituted or prosecuted by any officer, agent or attorney of said Commission, or by any officer of the State of Arkansas, or any other person for a failure to keep in effect and observe the aforesaid inhibited rates; that the defendants, Henry Leigh and George McLean, and all other persons and each of them, from and after the time that they shall have knowledge of this order be enjoined from at any time instituting any such suit or action for or on account of any failure of the complainant to keep in effect and observe said inhibited rates or for the recovery of damages by reason of such failure, during the time this order shall continue in effect.

It is further ordered that complainant execute a bond to the United States of America in the penal sum of Two Hundred
125 Thousand Dollars, conditioned that said complainant shall keep a correct account, showing, as respects every carriage of passengers or freight, the difference between the tariff actually charged and that which would have been charged had the rates inhibited hereby been applied, showing the particular carriage in question and the stations betwen which the same occurred and the name of the person affected, so far as may be practicable, which record shall be made and kept subject to the further order of this Court, and further conditioned that if it shall eventually be decided that so much of this order as inhibits the enforcement of existing rates should not have been made, that said complainant shall, within a reasonable time, to be fixed by the Court, refund in every instance to the party entitled thereto the excess of charge over what would have been charged had the inhibited rate been applied, together with lawful interest and damages.

It is further ordered that this order suspending the aforesaid rates and restraining the said Defendants take effect upon the filing of the aforesaid bond and the approval thereof by the Clerk of this Court, but not within less than ten days hereof. Nothing recited in this order shall operate to prevent the said Railroad Commissioners of the State of Arkansas from establishing and enforcing any reasonably compensatory and lawful rates in place of those whose enforcement is hereby inhibited.

Dated September 3rd, 1908.

(Signed) WILLIS VAN DEVANTER,
Circuit Judge.

And on the same day the following memorandum opinion of Court was filed:

In the Circuit Court of the United States for the Eastern District of Arkansas.

126 Sem*t*ember 3, 1908.

In re Arkansas Railroad Rates.

Mr. John M. Moore, for Complainants.

Mr. William F. Kirby, Attorney-General, Mr. George B. Rose, and Mr. Morris M. Cohn, for Defendants.

Memorandum Opinion.

VAN DEVANTER, *Circuit Judge:*

The matter now under consideration is an application in each of four suits against the Railroad Commissioners of the State of Arkansas and others for a temporary injunction restraining the enforcement of the prescribed rates for the transportation of freight and passengers in intrastate commerce in that State, it being contended on the part of complainant that these rates are unreasonable, non-compensatory, and, therefore, confiscatory. The matter was first brought on for hearing on July 28th last, when, at the request of the Defendants, the hearing was postponed until August 31st, that they might be better prepared to meet the contention of the complainants. On the latter dates the parties appeared, and three days were consumed in the presentation of proofs and in the arguments of counsel. Each of the four railroad companies is engaged in the transportation of freight and passengers, both intra-state and inter-state, in the State of Arkansas, and each has made a practical and extended application or test of the rates in question. The freight rates were prescribed
127 by the Railroad Commissioners while acting under the State Statutes, and the passenger rate, which is two cents per mile was prescribed by the Statute. The proofs disclose the revenues actually derived by each railroad, upon the application of these rates, from its business in the State, the revenues from each class of traffic being stated so as to show separately the earnings from intrastate freight, interstate freight, intrastate passengers and interstate passengers; and also disclose the value of the property employed by each road in the traffic within the State, the taxes paid thereon, the actual cost of conducting the freight traffic and the actual cost of conducting the passenger traffic. The first question for consideration is, How shall cost be apportioned between the intrastate and interstate traffic? The proofs make it quite plain that the production of a given amount of revenue is attended with greater cost in intrastate business, than in interstate business; and that this is a generally recognized fact is attested by the decisions in other cases where the reasons which make it so are fully stated. Chicago, etc., Co. v. Thompkins, 176 U. S. 167-178; Minneapolis, etc., v. Minnesota 186 U. S. 257, 262; Northern Pacific Railway Co. v. Keyes, 91 Fed. 51, 53. Here the additional

cost is shown to be at least one hundred per cent in freight traffic, and at least fifteen per cent in passenger traffic and this is not more than what has been shown in other cases. Undoubtedly these differences furnish a standard by which to apportion the total cost between the traffic which is intrastate and that which is interstate. Other standards are suggested, but the proofs indicate that none of them is as satisfactory or accurate as is the difference in cost in its relation to the revenue.

128 That standard must therefore be applied, and this may be done in this way, taking the freight and passenger traffic separately: increase the intrastate earnings by the ascertained percentage representing the difference in cost, thereby ascertaining what would have been earned by the same actual expenditure in conducting the intrastate traffic, had it been attended with the same relative cost as the interstate traffic; then add the intrastate earnings, as so decreased, to the interstate earnings, thereby ascertaining what would have been earned by the actual expenditure in conducting both the intrastate and interstate traffic, had they been attended with the same relative cost; then ascertain what proportion of this total represents the intrastate earnings as so increased, and then ascertain the corresponding proportions of the total cost of the intrastate and the interstate traffic. When this mode of apportionment is applied in these cases, the result shows that the earnings of each road from its intrastate freight traffic is much less than the proportion of the operating expenses and taxes properly attributable to it and that the earnings of two of them from intrastate passenger traffic is a little less than the proportion of the operating expenses and taxes properly attributable to it. As to the other two roads the earnings from the traffic last named are somewhat in excess of the proper proportion of the operating expenses and taxes, but not enough so to yield a return of one per centum per annum upon that proportion of the value of the property rightly attributable to such traffic. So the conclusion necessarily follows that the rates in question, both freight and passenger, are noncompensatory and unreasonable, and that their enforcement, although not so intended, is nothing other than a using or tak-

129 ing of the property of these railroad companies without due compensation, which is confiscation. This the Constitution of the United States does not permit, for, as was said in Smyth v. Ames, 169 U. S. 466, 526:

"1. A railroad corporation is a person within the meaning of the Fourteenth Amendment, declaring that no State shall deprive any person of property without due process of law nor deny to any person within its jurisdiction, the equal protection of the laws.

"2. A State enactment, or regulations made under the authority of a State enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation as under all the circumstances is just to it and to the public, would deprive such carrier of its property without due process of law and deny to it the equal protection of the laws, and would therefore be repugnant to the Fourteenth Amendment to the Constitution of the United States.

"3. While rates for the transportation of persons and property within the limits of a State are primarily for its determination, the question whether they are so unreasonably low as to deprive the carrier of its property without such compensation as the constitution secures and therefore without due process of law, can not be so conclusively determined by the Legislature of the State or by regulations adopted under its authority, that the matter may not become the subject of judicial inquiry."

It is pertinent in this connection to observe that in that case it was also said, p. 541:

"So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business,
130 nor the latter the losses on domestic business. It is only rates for the transportation of persons and property between points within the State that the State can prescribe; and when it undertakes to prescribe rates not to be exceeded by the carrier it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public in respect of domestic business. The argument that a railroad line is an entirety; that its income goes into and its expenses are provided for, out of a common fund; and that its capitalization is on its entire line within and without the State, can have no application where the State is without authority over rates on the entire line, and can only deal with local rates and make such regulations as are necessary to give just compensation on local business."

But it is urged that a temporary injunction ought not to be granted because these railroads have heretofore applied and given effect to the rates in question, the contention being that a temporary injunction may be employed to preserve the status quo pending the suit but not to change it. It may be conceded that such an injunction is generally employed, as stated, and that the Courts are generally reluctant to employ it otherwise, but this does not mean that they may not or ought not to employ it otherwise, when the exigencies of the case justly require it; for as has often been held, Courts of Equity are not thus limited in their powers, but may, by a temporary injunction effect a change in the status quo, if it be necessary to do so, as here to avoid irreparable injury from what is plainly a continuing wrong. In re Lennon, 166 U. S., 548, 556; Chicago, etc., Co. v. Winnett, — C. C. A., —; 162 Fed. 242, 249; Pokegama Co. v. Klamath Co., 86 Fed. 528, 533, 535. It
131 would hardly do to say to a railroad company that by resorting to the very best method of testing the adequacy of a prescribed rate, that is, by putting it into actual practice for a reasonable period, all right to a temporary injunction, which might otherwise exist, will be lost; and yet that would be the result if the narrow view of the use of such an injunction here contended for were to prevail. True, some of the rates in question have been in force substantially in their present form for a considerable time, but enough of influence is accorded to this fact when it is made a reason for acquiring stronger and more persuasive proof of inadequacy than otherwise would be required; and that influence has been accorded to it here. A temporary injunction will be granted

as prayed for, but it will be required for the protection of shippers and passengers, that a proper bond be executed in the sum of Two Hundred Thousand Dollars, conditioned that the railroad company shall keep a correct account showing, as respects every carriage of freight or passengers, the difference between the carriage actually charged, and what would have been charged had the restraining rates been applied, and showing the particular carriage in question, the stations between which it occurred, and the name of the person affected, such record to be made and kept subject to the further order of the Court; and also conditioned that the excess charges with lawful interest and damages, shall be returned in each instance to the party entitled thereto within a reasonable date to be fixed by the Court, if it shall be eventually determined that the temporary injunction ought not to have been granted.

Endorsed on back: "Filed Sep. 3, 1908. W. P. Feild, Clerk."

132–451 The following affidavits, on behalf of the complainant, were introduced and read at the hearing of the motion for a temporary restraining order:

(Omitted in printing per stipulation.)

452 And on September 12th, 1908, the following proceedings were had, to-wit:

Before the Clerk in Vacation, September 12, 1908.

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RY. CO.
vs.
ROBERT P. ALLEN et al., &c.

Comes the complainant, by Thomas M. Mehaffy, Esq., its solicitor and files herein its Bond in the sum of Two Hundred Thousand Dollars, with United States Fidelity and Guaranty Company, as surety, which Bond is approved by the Clerk of this Court, as required under restraining order of this Court of September 3, 1908. Which Bond is as follows:

In the Circuit Court of the United States within and for the Western Division of the Eastern District of Arkansas.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Complainant,

vs.

ROBERT P. ALLEN, JOHN W. CROCKETT, and JOHN E. HAMPTON, Railroad Commissioners of the State of Arkansas; Henry Leigh and George L. McLean, Defendants.

Injunction Bond.

Know all men by these presents, that the above complainant as Principal, and The United States Fidelity & Guaranty Company, a Corporation of the State of Maryland, as Surety, are held and firmly bound to the United States of America in the penal sum of Two Hundred Thousand ($200,000.00) Dollars, well and truly to
453 be paid in lawful money of the United States, for the payment of which they bind themselves, their successors and assigns firmly by these presents.

Signed with our hands and sealed with our seals and dated this eleventh day of September, A. D. 1908.

This bond is made upon the following conditions, to-wit:

Whereas, the Court in the above entitled cause, made an order on the third day of September, A. D. 1908, granting a restraining order and providing among other things as follows, to-wit:

"It is further ordered, that complainant execute a bond to the United States of America in the penal sum of Two Hundred Thousand Dollars conditioned that said complainant shall keep a correct account showing, as respects every carriage of passengers or freight, the difference between the tariff actually charged and that which would have been charged had the rate inhibited hereby been applied, showing the particular carriage in question and the stations between which the same occurred, and the name of the person affected as far as may be practicable, which record shall be made and kept subject to the further order of this Court, and further conditioned that if it should eventually be decided that so much of this order as inhibits the enforcement of existing rates should not have been made, that said complainant, shall, within a reasonable time, to be fixed by the Court, refund in every instance to the party entitled thereto, the excess in charge over what would have been charged had the inhibited rates been applied, together with lawful interest and damages."

Now, if the above named complainant, St. Louis, Iron
454 Mountain & Southern Railway Company, shall well and truly keep and perform all and singular the conditions of said restraining order as above set forth, then this obligation shall be null and void, otherwise to be and remain in full force and effect.

In testimony whereof, the above bounden Principal has caused its corporate name to be hereunto subscribed by its Vice-President, and its corporate seal to be hereto affixed and duly attested, and said Surety has caused its corporate name to be hereunto subscribed, and its corporate seal to be hereto affixed, by Sam W. Reyburn & D. H. Cantrell, its duly authorized Attorneys in Fact for this purpose this eleventh day of September, A. D. 1908.

[SEAL.] ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
By C. S. CLARKE, *Vice-President.*

Attest:

F. W. IRLAND,
Assistant Secretary.

[SEAL.] UNITED STATES FIDELITY & GUARANTY CO.
By SAM W. REYBURN,
D. H. CANTRELL, *Attorneys in Fact.*

The foregoing bond is approved this 12th day of September, A. D. 1908.

W. P. FEILD, *Clerk.*

Endorsed on back: Filed September 12, 1908. W. P. Feild, Clerk.

455 And on October 5, 1911, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
vs.
ROBERT P. ALLEN et al., &c.

Come the parties by their respective Solicitors and file herein their written stipulation extending time in which to file replication to November rule day.

Which stipulation of Counsel is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas. In Chancery.

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Complainant,
v.
ROBERT P. ALLEN et al., &c., Defendants.

It is stipulated between Counsel that the time for filing the replication in said cause may be postponed until the November Rules.

MOORE, SMITH & MOORE,
Attorneys for Complainant.
MORRIS M. COHN,
Attorney for Defendants.

Endorsed on back thereof: "Filed Oct. 5, 1908. W. P. Feild, Clerk."

456 UNITED STATES OF AMERICA,
Western Division of the
Eastern District of Arkansas:

Be it remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 20th day of October, Anno Domini, One Thousand Nine Hundred and Eight, at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Treiber, Judge presiding and holding said Court, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

NOVEMBER 16TH, 1908.

Now on this day comes the complainant and files herein its verified petition for an order requiring the Defendants, Robert P. Allen, John W. Crockett and John E. Hampton and Roy D. Campbell, to appear and show cause why they should not be dealt with for disobedience of the order of injunction heretofore granted by this Court in said cause and it is thereupon by the Court ordered that said Defendants, Robert P. Allen, John W. Crockett and John E. Hampton and the said Roy D. Campbell appear in this Court on Thursday the 19th instant at 9:30 o'clock A. M., and show cause, if any they can, why they should not be dealt with for contempt of Court in violating the aforesaid order of injunction.

It is further ordered that a copy of said petition and of this order be served on said defendants and the said Roy D. Campbell.

(Signed) JACOB TREIBER, *Judge.*

Which petition for Rule on Defendants for Contempt, is as follows:

457 In the United States Circuit Court for the Western Division of the Eastern District of Arkansas. In Chancery.

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,

v.

ROBERT P. ALLEN, JOHN W. CROCKETT, and JOHN E. HAMPTON, Railroad Commissioners of the State of Arkansas, et al., Defendants.

Complainant would respectfully represent to this Honorable Court that under the order entered in said cause on the 3rd day of September, 1908, setting aside temporarily the rates prescribed by the Defendants, as the Railroad Commission of the State of Arkansas for the transportation of persons and property in said State, and enjoining and restraining said Defendants and all other persons from instituting or causing or procuring to be instituted any action or actions against said complainant by reason of its failure to continue in force the aforesaid rates prescribed by said Commission for the transportation of persons and property, it did on the 24" day of October, 1908, file with the said Commission a schedule of rates and charges to take effect and be in force between stations on its lines of railroad in the State of Arkansas, on and after the 2nd day of November, 1908, and on said last mentioned date did put said rates into force. That on the 31st day of October, 1908, the Defendants, Robert P. Allen, John W. Crockett and John E. Hampton, as Railroad Commissioners of said State, made the following order, to-wit:

458 "The St. Louis, Iron Mountain & Southern Railway Company, St. Louis, Southwestern Railway Company, Chicago, Rock Island & Pacific Railway Company, St. Louis & San Francisco Railroad Company and the Kansas City Southern Railway Company, having severally filed with the Commission a tariff of freight rates bearing the endorsements: "Effective Nov. 2, 1908"; and the Commission having given due and legal notice that on this date, October 31, 1908, it would take up and consider the freight tariffs submitted by said companies, and the matter coming on for hearing the defendants being present; the St. Louis, Iron Mountain & Southern Railway Company by its Vice-President, J. M. Johnson;

the St. Louis, Southwestern Railway Company, by its Assistant General Freight Agent, J. D. Watson; the Chicago, Rock Island & Pacific Railway Company, by its Attorney, T. S. Buzbee, and General Freight Agent, H. W. Morrison; and the St. Louis & San Francisco Railroad Company by its General Freight Agent, E. K. Voorhees. (The Kansas City Southern Railway Company had received due and legal notice, but had no representative at the meeting.) After hearing the statements and arguments of all parties desiring to be heard, including those of a large number of shippers representing different lines of business, and giving due consideration to the same, the Commission finds that the said tariffs of freight rates submitted by the said railway companies are unjust, unreasonable and extortionate, and the same are in all things disapproved and said companies are hereby prohibited from applying or putting same into effect or making any charges whatsoever on shipments of freight within this State based upon said tariffs, under the penalties denounced by the laws of this State providing for a Railroad Commission, creating its powers and duties, and providing for the enforcement of its orders.

459 "The Commission finds further: that the rates as issued and published in its Standard Freight Distance Tariff No. 3 are just, reasonable and compensatory, although it recognizes fully that it is enjoined temporarily by the Circuit Court of the United States from enforcing the same, and it does not attempt in any way to enforce the rates provided in said Standard Distance Tariff No. 3, nor shall it attempt to do so while said temporary injunction is in force.

"It is further ordered by the Commission that this order take effect immediately, and that the Secretary of the Commission transmit a copy of the same at once to the General Freight Agents of each of the said lines."

That afterward, on the 14" day of November, 1908, the said Commissioners, without making or prescribing any other or different rates than those mentioned and referred to in the aforesaid order of the Court, caused suit to be instituted by Roy D. Campbell, acting — against complainant for the recovery of penalties for the failure of complainant to continue and keep in force the rates prescribed by said Commission, which suit was instituted under the Statutes of Arkansas imposing a penalty for the violation of "the tariff of charges as fixed by said Commission."

Complainant further represents and shows to the Court that the action of said defendants in causing and procuring suits to be instituted for the recovery of statutory penalties as aforesaid and of the said Roy D. Campbell in instituting said suit is in violation of said order of injunction, and is in contempt of the authority of this Honorable Court.

Wherefore, complainant prays that said Robert P. Allen, John W. Crockett, John E. Hampton and Roy D. Campbell be

460 cited to appear before this Honorable Court and required to show cause why they should not be dealt with for disobedience

of said order, and for such other action as may seem meet and proper in the premises.

MOORE, SMITH & MOORE,
Attorneys.

STATE OF ARKANSAS,
County of Pulaski, ss:

William Jeffery being duly sworn, states that he is the Rate Clerk of the St. Louis, Iron Mountain & Southern Railway Company, and that the facts set out in the foregoing petition are true.

WILLIAM JEFFERY.

Subscribed and sworn to before me this the 16th day of November, 1908.

[SEAL.]

JOHN W. ROSE,
Notary Public.

My Commission expires Aug. 7th, 1912.

Endorsed on Back thereof: "Filed Nov. 16, 1908. W. P. Feild, Clerk."

And on November 19th, 1908, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al., &c.

NOVEMBER 19*th*, 1909.

461 Now on this day come the parties hereto, and the respondents to the citation of contempt heretofore issued, to-wit:

Robert P. Allen, John W. Crockett and John E. Hampton and Roy D. Campbell and file their responses to the petition for citation and the matter coming on to be heard on the petition and responses and the Court being well and sufficiently advised in the premises doth find and hold that said responses are insufficient.

It is therefore considered, ordered and adjudged that the respondents, Robert P. Allen, John W. Crockett and John E. Hampton in ordering suits to be brought against the St. Louis, Iron Mountain & Southern Railway Company complainant for violation of order 375 F of the Railroad Commission of Arkansas and respondent Roy D. Campbell, in instituting said suit as the agent and attorney of his co-respondents violated the order of temporary injunction heretofore entered in this cause and they and each of them are in contempt of Court.

It is ordered that the further hearing be postponed until November 23, 1908.

(Signed) JACOB TREIBER, *Judge.*

Which responses of Defendants are as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas, in Chancery.

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,

v.

462 ROBERT P. ALLEN, JOHN W. CROCKETT and JOHN E. HAMPTON, Railroad Commissioners of the State of Arkansas et al., Defendants.

Response to Petition for Rule.

Come the respondents, Robert P. Allen, John W. Crockett and John E. Hampton, Railroad Commissioners of the State of Arkansas, and Roy D. Campbell, Prosecuting Attorney for the Sixth Judicial Circuit of Arkansas, and for response to the petition of the complainant, the St. Louis, Iron Mountain & Southern Railway Company, for a rule against them and to the order of this Honorable Court, requiring them on this day to show cause why they should not be dealt with for contempt, say:

(1) That it is true that this Honorable Court did, on September 3rd, 1908, enter an order setting aside and suspending temporarily the rates subscribed by the Railroad Commission of Arkansas set out in its "Standard Freight Distance Tariff No. 3, which was issued by the order of the said Commission and effective June 15th, 1908, and all amendments and supplements thereto"; and that said order further enjoined and restrained the Defendant Commissioners, or any of its officials, agents or attorneys, from instituting or causing or procuring to be instituted any action or actions against the complainant Railway Companies "for a failure to keep in effect and observe the aforesaid inhibited rates"; as fixed by said Tariff No. 3, or amendments or supplements thereto.

(2) That it is true that the complainant did on October 24th, 1908, file with the said Railroad Commission, a schedule of rates and charges to take effect and be in force between stations on its lines of railroad in Arkansas, in and after the 2nd day of

463 November, 1908; and that on said last mentioned date, it did put same in force.

(3) That it is true that said Robert P. Allen, John W. Crockett and John E. Hampton, acting as such Railroad Commissioners, of Arkansas, did on October 31st, 1908, after notice to complainants and a full hearing thereon make the order (No. 375-F), set forth in the Complainant's petition for a rule.

(4) That it is not true that said respondent Railroad Commissioners did on November 14th, 1908, or at any other time, cause suit to be instituted by the respondent, Roy D. Campbell, Prosecuting Attorney, acting as officer, Agent and Attorney for said Commission, against said Complainant, St. Louis, Iron Mountain & Southern Railway Company, "for the recovery of the penalties for failure of said complainant to continue and keep in force the rates prescribed by said Commission."

Further answering, the respondents allege the truth to be:

(6) That on said November 14th said Roy D. Campbell, Prosecuting Attorney, acting as Attorney for said Railroad Commission of Arkansas and by its direction, did bring a suit against said Complainant St. Louis, Iron Mountain & Southern Railway Company, for penalties incurred by it for violation of the aforesaid Order No. 375-F of the Railroad Commission of Arkansas set out in Complainant's petition for a rule; but that said Order No. 375-F did not seek to continue and keep in force the rates prohibited by the order of this Honorable Court of September 3rd, 1908, but only to prohibit the subsequent schedule filed by the Complainant, St. Louis, Iron Mountain & Southern Railway Company, on October 24th, 1908.

That the respondents made said Order No. 375-F, in
464 the exercise of their proper discretion and judgment in the conscientious discharge of their duties as such Commissioners under the law of the State of Arkansas, giving them full power and authority to make reasonable and just rates of freight, express and passenger tariffs to be observed by all railroad companies and to approve as just and reasonable rates and tariff charges for transportation by railroad companies, and to disapprove unjust and unreasonable rates of tariff charges by such transportation companies and prohibit the enforcement of such unreasonable and unjust charges, under the pains and penalties prescribed by such law. That the said schedule of rates and charges proposed by said company were and are so unreasonable, unjust and exhorbitant as to constrain them in the proper exercise of their official duty to prohibit their charge and enforcement, which they did and had the right to do.

That said suit was brought by respondents for the penalty prescribed, for violating said order prohibiting the putting in force of the unjust and unreasonable rate complained about. Which said rate charged unreasonable and unjust and prohibited by respondents—is 100 per cent more than that prescribed in Standard Distance Tariff No. 3, enjoined, and in fact and effect more than 200 per cent greater than the rate voluntarily fixed by complainants before respondents ever made any rate.

That in the making of said order No. 375-F, and in bringing the suit for penalties incurred by violation thereof, respondents did not in any manner violate the order of this Honorable Court afore mentioned, and that neither of these respondents desires, desired or intends to do so, and that they expressly disclaim any attempt, inten-

tion or disposition to violate said order and injunction in
465 their said order No. 375-F. They did not make any other or different rates than those enjoined, believing that same upon a final hearing will be determined reasonable, just and compensatory and leaving the said complainant the right, without limitation, to fix any reasonable and just rates higher than those enjoined by the Court and below the ones prohibited by their order.

Wherefore, having fully responded, and being guilty of no contempt or disobedience of the aforesaid order of this Honorable Court, Respondents pray that the rule herein be discharged.

Respectfully submitted,

WM. F. KIRBY,
Attorney General;
ROY D. CAMPBELL,
Pros. Att'y, 6th Circuit;
JOE T. ROBINSON,
Solicitors for Defendants.

Comes Roy D. Campbell, one of the Respondents herein and states upon oath that the foregoing statements contained in said response, are true to the best of his knowledge and belief.

ROY D. CAMPBELL.
ROBERT P. ALLEN.
JOHN W. CROCKETT.
JOHN E. HAMPTON.

Subscribed and sworn to before me this 19th Nov. 1908.
W. P. FEILD, *Clerk.*

Endorsed on back thereof: Filed Nov. 19, 1908. W. P. Feild, Clerk.

466 In the United States Circuit Court for the Western Division of the Eastern District of Arkansas. In Chancery.

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Complainant,
v.
ROBERT P. ALLEN, JOHN W. CROCKETT, and JOHN E. HAMPTON,
Railroad Commissioners, and ROY D. CAMPBELL.

Separate Response of Roy D. Campbell.

Comes the Respondent, Roy D. Campbell, Prosecuting Attorney for the Sixth Judicial Circuit of Arkansas, and for Separate Response to the petition of the complainant for a rule against him to show cause why he be not dealt with for contempt of this Honorable Court, says:

That it is made the duty of the Prosecuting Attorney of any District in the State of Arkansas, when called to do so by the Railroad Commission, to institute any suit for the violation of the order of said Commission.

That on the 14th day of November, 1908, the Railroad Commission of Arkansas directed the said Roy D. Campbell, as Prosecuting Attorney of the Sixth Judicial District of Arkansas, to institute the suit herein complained of; and that same was by him instituted in obedience to the law and the said request of the Railroad Commission.

That he was not a party to the suit in this Court wherein
467 the Railroad Commission was enjoined from enforcement of certain rates by them prescribed. That he expressly disclaims any intention or desire to violate the orders of this Honorable Court and whatever action has been by him taken in this matter, has been taken because it was his official duty, fixed by law so to do.

Wherefore, he prays that the rule herein as against him be discharged.

ROY D. CAMPBELL,
Respondent.

Endorsed on back thereof: Filed Nov. 19, 1908. W. P. Feild, Clerk.

And on November 23d, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

On Rule for Contempt.

Come the parties by their respective Solicitors and the hearing on the citation for contempt of said Respondents, Robert P. Allen, John W. Crockett and John E. Hampton, as Railroad Commissioners of the State of Arkansas, and Roy D. Campbell, as Prosecuting Attorney, now come on — further hearing; and it being made to appear to the Court that the suits brought by said Railroad Commissioners and said Prosecuting Attorney in the Courts of this State against said complainant in violation of the injunction granted herein have been dismissed and further proceeding thereunder abandoned.

It is now ordered by the Court that the rule herein be dis-
468 missed and that said respondents and each of them are hereby discharged therefrom, and that they pay the costs of this proceeding.

And on February 4th, 1909, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Come Morris M. Cohn and Rose, Hemingway, Cantrell & Loughborough, Esqs., and file herein their petition, asking leave of the Court to withdraw their further appearance as Counsel for said Defendants herein, and the Court being sufficiently advised in the premises doth grant said petition, and said Solicitors are permitted to withdraw from this cause.

Which petition of Solicitors to withdraw from the case is as follows:

In the United States Circuit Court for the Eastern District of Arkansas, Western Division.

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Come the undersigned and withdraw their further appearance for the Defendants, Robert P. Allen, John W. Crockett and John
469 E. Hampton, as Railroad Commissioners of the State of Arkansas, they being no longer connected with said cause, as attorneys for said Defendants.

MORRIS M. COHN.
ROSE, HEMINGWAY, CANTRELL & LOUGHBOROUGH.

Feb'y 4/09.

Endorsed on back thereof: Filed Feb'y 4, 1909. W. P. Feild, Clerk.

And on February 18, 1909, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Come the Defendants, the Railroad Commissioners of the State of Arkansas, by Hal Norwood, Joseph M. Hill, William F. Kirby and James H. Harrod, Esqs., their Solicitors and file herein their motion to dissolve the injunction heretofore granted herein, and also the

affidavits of E. E. Russell, J. I. Porter, J. G. Wallace, J. T. Rutherford, A. C. Curtis, J. R. Case, F. W. Heinsteadt, C. K. Smith, J. E. Hampton, R. H. Oliver, J. J. Mandelbaum, L. S. Dunaway, G. W. Swaim, T. J. Gay, F. S. Williams, F. N. Atchison, E. W. Hoffman, J. P. Logan, S. J. Beauchamp, F. M. Moore, S. T. Edwards, C. W. Clark, J. E. Daley, G. W. Swaim, C. W. Linthicum, John Patterson, M. L. Mardis, A. D. Allen, W. F. Kirby, R. O. Burks, J. T. Jarrell, F. J. Rentelherber, T. H. Bunch, R. W. McFarland, C. E. Taylor and A. R. Bragg, C. H. Ivers, D. D. Adams, F. F. Freeman, W. E. Floyd.

Which motion to dissolve injunction is as follows:

470 In the United States Circuit Court for the Western Division of the Eastern District of Arkansas. In Chancery.

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,

v.

ROBERT P. ALLEN, JOHN W. CROCKETT, and JOHN E. HAMPTON, Railroad Commissioners of the State of Arkansas, et al., Defendants.

Motion to Dissolve Injunction.

Come the Defendants herein, Robert P. Allen, John W. Crockett, and John E. Hampton, constituting the Railroad Commission of the State of Arkansas, and move the Court that the temporary injunction herein granted by His Honor Willis Van Deventer, Circuit Judge, be not continued until the final hearing or until the further order of the Court and that same be dissolved, or if in the judgment of the Court the injunction should be continued, that it be so modified as to give the Defendants and those they represent the equitable relief to which they are entitled. That the Defendants allege the following grounds for discontinuance of said injunction, to-wit:

I.

That said injunction was improvidently granted, for these reasons, to-wit:

(*a*) That the evidence of the Plaintiff, which sought to sustain the allegations of the bill that the freight and passenger rates were confiscatory, was based upon statistics of six months' business of
471 the Plaintiff Railroad Company and during almost half of said period there was a financial and business panic, when the industries and traffic all over the country, and particularly the State of Arkansas, were partially paralyzed and there was a scarcity of money to move the crops and products, and a lack of demand for coal, timber and manufacturing products. And, since the granting of said injunction, the Supreme Court of the United States has, on January 4th, 1909, said in regard to a similar situation:

"We think it was error to confine the investigation to, and base the judgment upon, that year alone. The precise subject of inquiry was, what would be the effect of the ordinance (referring to an ordinance fixing rates) in the future. The operations of the preceding fiscal year, or of any other fiscal year, were valueless if the year was abnormal, and were only of significance so far as they foretold the future. If, as in this case, sufficient time has passed, so that certainty, instead of prophesy can be obtained, the certainty would be preferable to the prophesy."

Had the Court made this utterance prior to the preliminary hearing herein it is confidently asserted that His Honor, Judge Van Deventer, would not have granted the temporary injunction upon the evidence adduced, based upon statistics of the operation of the Plaintiff's road during half of an abnormal year.

(*b*) The injunction was improvidently granted for the further reason that it changed the status quo of the freight and passenger rates which had long been in force, particularly the freight
472 rates, and it is contrary to the principles of equity jurisprudence that a status quo be changed by a preliminary injunction. The facts in regard thereto are these, towit:

The freight rates established by the Commission, which were enjoined, with the exception of a few changes from time to time which did not materially diminish the aggregate of the Plaintiff's income, had been in force on single lines since April 10th, 1900, and on two or more lines since July, 1903. And the reports made to the Commission by the Plaintiff, which it was required by law to make, showed that it made more money on its Arkansas business in the years 1906, 1907, and 1908 than it did prior to the promulgation of said Tariff in April, 1900. That in said last three years the percentage of income to operating expense was steadily increasing. That the passenger rates had been put in effect by an Act of the General Assembly and the railroads had operated under same for a period of about sixteen months prior to the injunction herein, and said reduced passenger rates did not cause any material loss, if loss at all, to the Plaintiff railroad company, as the increased travel without a corresponding increase in expense compensated for the reduced passenger fare.

Wherefore, said injunction, having been issued contrary to the established principles of equity jurisprudence, should not be continued but should be dissolved.

II.

These Defendants assert that the filing of the bill in equity herein, seeking a temporary and permanent injunction, bound said plaintiff to do equity, as it was seeking relief in a Court of Equity,
473 and, when said temporary injunction was granted restraining the enforcement of the passenger and freight rates upon the ground that said rates were unreasonable and confiscatory, the said Plaintiff was bound by the principles of equity jurisprudence to put in force, if it exercised its power, only reasonable rates, and was not at liberty to avail itself of the injunction against the rates estab-

lished under the law and put in force unreasonable rates. In violation of this settled principle of equity jurisprudence the Plaintiff has, since the rates established by the Commission and the General Assembly were temporarily enjoined, established freight and passenger rates on all intrastate shipments and said freights and passenger rates are unreasonable and exhorbitant and are destroying many of the industries of the State. And said Plaintiff is maintaining interstate rates so low that the same amount to a discrimination against the business and industries of the State of Arkansas. That it discriminates in favor of longer hauls of interstate shipments, under similar and like circumstances, against shorter hauls or intrastate shipments to the great detriment of the shippers and consumers of the State of Arkansas.

The tariff put in by the Railroad since said injunction upon the leading articles of commerce in the State is an unreasonable increase. On grain there is an increase of 50 per cent over the Commission rates; on cotton 140 per cent over the Commission rate, on packing house products 100 per cent, on coal 35 per cent, on brick, stone and sand, 75 per cent, on lumber 107 per cent, and on the various lines of merchandise about 75 per cent. There is an average increase on the principal commodities of the State of 77 per cent over
474 the Commission rate which these defendants aver is unreasonable, extortionate and oppressive to the shippers and consumers of the State.

The Commission avers that its Freight Tariff as a whole is fair, compensatory and reasonable, and this the defendants expect to maintain by satisfactory evidence at the final hearing of this suit. And said Commission has, since the injunction by Judge Van Deventer, by proper action, after notice to the Plaintiff and all other railroads putting in such unreasonable and exhorbitant rates, after a hearing, declared said freight rates so established by the Plaintiff and the other railroads to be unreasonable. And these Defendants now submit with this petition many affidavits to sustain the action of said Commission in declaring the rates unreasonable, and to sustain the allegation herein that said rates are unreasonable, extortionate and discriminatory against the State of Arkansas and destructive and detrimental to the shippers of the State.

These Defendants allege that it is a principal of equity that detriment to the public is a consideration proper to be considered by a Chancellor when considering an application for a discontinuance of an injunction. That the Plaintiff has taken advantage of its injunction against the Commission and put in force unreasonable, extortionate and oppressive rates. Wherefore, having violated the spirit of the injunction obtained by it, the Plaintiff is not entitled to a continuance thereof, but, under the settled principles of equity the same should be dissolved.

The Defendants further allege that in many instances the unreasonably high rate established by the railroads since the
475 temporary injunction herein has diminished the value of traffic, and the Plaintiff itself is suffering a material loss of business from its destruction of the industries of the State, and, in

many instances, the injunction is injuring it as well as the shippers and consumers and the industries of the State.

The Defendants allege that, after the injunction was granted temporarily restraining the two cent passenger rate put in force by the Act of the General Assembly, *that* the Plaintiff has increased the passenger rate to three cents per mile and has not afforded any better service while doing —. And the Defendants further allege that the Plaintiff is transporting all persons who buy two thousand mile tickets at two cents per mile, while requiring travellers who do not buy such mileage books to pay three cents a mile, and is thereby materially decreasing the amount of travel. The Defendants aver that the increase in travel at the rate of two cents a mile, except in abnormal years and in times of panic, will not cause any loss to Plaintiff or any other trunk line in the State of Arkansas, as the increased travel on account of the reduced rate will compensate for the loss in rate, and if the Plaintiff gives said two cent passenger rate a fair test, as it has not done, the same will prove to be true. The Defendants further allege that neither the Plaintiff nor these Defendants are able to state the exact effect of the two cent passenger rate, and there has been no fair test of it under the principles established by the Supreme Court of the United States, it is a matter of prophesy and not of fact as to the effect of the same, and according to the decisions of that Honorable Court, in such a case the Plaintiff is not
476 entitled to a temporary or permanent injunction until it has fairly tested said rate and found the same confiscatory so long a length of time that the future can be foretold by its past operation.

III.

If, in the better judgment of the Court, it is found that Plaintiff's violation of the spirit of the injunction does not entitle the Defendants to its dissolution, then the Defendants allege that those they represent are entitled to have the injunction continued only upon terms which would be equitable to the Plaintiff and to the interests represented by the Commission, said terms being that the Plaintiff be enjoined from enforcing its existing rates where shown to be exorbitant and unreasonable and that it be enjoined to put into force fair and reasonable rates pending the final determination of this litigation over the rates enjoined by it.

IV.

The Defendant- alleges that the Plaintiff has a plain and adequate remedy against any rate established by the Commission which is not reasonable and compensatory and should not be entitled to seek a remedy in a court of equity until it had exhausted its efforts to obtain a reasonable and compensatory tariff under the existing law, which affords it ample and complete redress against any injustice in the freight rate established by the Commission. That it is made the duty of the Commission "to hear all complaints made by any person, firm or corporation against any such tariff or charges, so approved (by it); to hear the parties to the controversy in person or by at-

torney, or both, and may take testimony, orally and in writing, and
regulate the argument thereon, and conduct the investigation
477 of such complaints in such manner as to the Commission may
seem best to arrive at the truth, and when any changes are made in the tariff notice thereof shall be given to the person or corporation to be affected thereby." And it is further made the duty of the Commission, in changing or fixing rates, to take into consideration the character or nature of the service to be performed, the entire earnings of the railroad, the expense of operating same and the income and value thereof. And the Defendants assert the facts to be that when the first tariff was established by the Commission, in 1900, *that* it assured the Plaintiff and all other railroads affected by it, that, if said tariff did not produce a fair profit, the Commission, upon a showing so made, would readjust so as to produce, if possible, for the Plaintiff a fair profit upon its investment. And such has been the attitude of the Commission from then until the present time and is still the attitude of the Commission. That several small line railroads have applied to the Commission for relief against the existing rates, and, where the showing has been made of the justice of the application, the Commission has granted the same. That the Plaintiff has not presented any complaint to the Commission alleging that any rate, or the tariff as a whole, established by it, was not compensatory and asking for an increase of any rate or of the tariff as a whole. That the Commission recognizes now, as it has always done, no tariff, whether promulgated by a railroad or a Commission is perfect, and that all tariffs should be changed from time to time to meet changed conditions, in order to do justice to the railroads or shipper, as the case may be and this the
Commission has at all times been ready to do whenever satis-
478 factory evidence should be offered to it showing the justice of and necessity for same.

The Defendants assert that the temporary injunction should not be continued until the Plaintiff has availed itself of its legal right to obtain redress of its alleged grievance, insofar as the freight rates are concerned before the Commission, and alleges it is contrary to the principles of equity to entertain a suit where full and adequate remedy at law is open to the Plaintiff; that it is contrary to the comity which Federal Courts extend to State Tribunals to grant relief in said Federal Courts against State regulations promulgated under State laws, until the Plaintiff has sought its constitutional right in the tribunals wherein the alleged unconstitutional regulation is attempted to be enforced.

The Defendants allege that they are called upon to defend in this Court the rates of their predecessors, and maintained by themselves, with a few changes as called for from time to time, without having had an opportunity to hear the complaint of the Plaintiff and pass upon its justice.

Wherefore, the Defendants pray that the injunction be discontinued or its operation suspended until the Plaintiff applies for redress before the Commission and gives it an opportunity to pass

upon the justice of the matters which are alleged in Plaintiff's complaint.

V.

The Defendants allege that the Plaintiff's case is predicated upon the relative cost of intrastate over interstate traffic, and that the method of computing intrastate traffic is one upon which railroad accountants differ. The General Auditor of the Plaintiff,
479 in his affidavit filed in this case, has testified:

"There is a diversity of opinion among railroad officials and accountants who deal with the accounts of railroad corporations as to how expenses should be divided between the two classes of service, intrastate and interstate. For operating purposes the train mile, car mile, and ton mile are often used as units to determine the division of freight service and freight cost."

Said Auditor asserts that the revenue basis is the proper one, but competent and equally skilled accountants assert that it is not the true basis but the ton mile basis should control. This difference of opinion is one of the issues to be determined in this suit, and if the ton mile basis is established to be the proper basis, then under the evidence submitted by the Plaintiff as to its gross earnings, operating expenses and value of its property, the Commission's tariff is providing it a large revenue and affording a fair compensation upon its investment. That it is contrary to the principles of equity that a temporary injunction should change the status quo where the matter to be litigated is gravely doubtful, and upon such gravely doubtful contention the Plaintiff's whole case is predicated. When an injunction is granted against a rate fixed by law as violative of constitutional right, the invalidating facts must be proved to the satisfaction of the Court and not merely rest upon a difference of opinion among expert accountants.

VI.

If the injunction in whole, or modified so as to require the Plaintiff to do equity while this litigation is pending by
480 establishing reasonable rates, is continued, then the Defendants pray that it be further modified so as to afford the interests they represent adequate relief, in the event that the Defendants are ultimately successful in the following particulars:

(*a*) The bond required of the Plaintiff is wholly inadequate to cover the losses to the interests represented by this Commission, to-wit: the shippers and passengers of the State. And the Defendants allege the facts to be, taking the increased rate of 33⅓ per cent on passenger traffic, established by the railroads, and applying said increase to the passenger traffic of the six months for which the Plaintiff furnished statistics, the increased revenue to the Plaintiff on the passenger business would amount to $557,694.80 per annum. From this gross sum should be deducted the amount of travel that the Plaintiff still permits to be had at two cents a mile, the exact amount of which is not known to these defendants. Taking the statistics for the six months' freight business furnished

by the Plaintiff, and applying to it the increase of 75 per cent (which is really less than the true increase) an increased revenue of $960,375.24 is produced. From this should be deducted the loss of business to the Plaintiff from its destruction of the various industries that are not now under its high tariff, shipping the commodities which they would otherwise have shipped. The Defendants allege that these calculations, based upon the statistics of the Plaintiff, show that a bond of $200,000.00 is wholly inadequate to protect the people who are paying the extortionate and unreasonable rates, in the event that the Plaintiff does not finally prevail in this case, and that such bond should be required as will
481 protect such interests.

(*b*) That the injunction herein requires the Plaintiff shall keep a correct account, showing, as respects every carriage of passengers or freight, the difference between the tariffs actually charged and that which would have been charged had the rates inhibited been applied, showing the particular carriage in question and the stations between which the same occurred, and the name of the person affected, so far as may be practicable, and that Plaintiff keep a record of the same, subject to the order of the court, and conditioned to refund the excess should the injunction not be finally sustained. These Defendants allege that said requirement is not ample to secure the shippers and passengers and pray that should the injunction be continued, the plaintiff be required to furnish to each passenger and to each shipper a certificate or coupon showing the excess payment over the rates enjoined, so that said passenger or shipper would have prima facie evidence of the amount due him from the Plaintiff should the Plaintiff not ultimately succeed herein.

And these Defendants further assert, upon information and belief that the Plaintiff is not keeping such an account as is required by the injunction, and pray that it be required to file an account, showing the excess of freight and passenger rates collected by it over the rates enjoined, and from whom such freight and passenger fares have been collected, to the end that the rights of all parties interested may be protected.

And these Defendants pray for all further relief which the Court may find in equity and good conscience they and those they represent are entitled to receive.

HAL L. NORWOOD,
Attorney General;
482 JOSEPH M. HILL,
WILLIAM F. KIRBY,
JAMES H. HARROD,
Counsel for State.

We, Robert P. Allen, John W. Crockett and John E. Hampton state on oath that we verily believe the matters set forth in the foregoing petition are true.

____ ____.
____ ____.
____ ____.

Sworn to and subscribed before me this 17th day of February, 1909.

—— ——.

Endorsed on back thereof: Filed Feb'y 18, 1909, W. P. Feild, Clerk.

And on March 4, 1909, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Comes the Complainant by Moore, Smith & Moore and Thomas S. Buzbee, Esqs., its Solicitors, and come the Defendants, the Railroad Commissioners of the State of Arkansas, by Hal L. Norwood, Joseph M. Hill, William F. Kirby, James H. Harrod, Esqs., their Solicitors, and the motion of the Defendants to dissolve the injunction heretofore granted herein coming on for hearing the Court proceeds to hear the argument of counsel thereon;
483 and the hearing thereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

And on March 5, 1909, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Comes on to be heard the sufficiency of the motion to dissolve the injunction herein, or, in the alternative to modify the same.

It was agreed that in the event that the Court held the motion sufficient in law to grant any relief as prayed, the complainant should have an opportunity to take issue with the facts therein stated. The sufficiency of the motion being fully argued by Counsel for Complainant and Defendants, the Court doth declare that the first paragraph of the motion is overruled, to which ruling the Defendants at the time excepted.

The Court doth declare that the second and third paragraphs of the motion are sufficient in law to require the Complainant to respond thereto and to entitle the Defendants to a hearing on the allegations contained in said paragraphs and it sustains the legal sufficiency and the allegations thereof to entitle Defendants to a response and hearing thereon.

The Court doth overrule the fourth and fifth paragraphs, to which ruling the Defendants at the time excepted.

484 The hearing upon the sixth paragraph was continued subject to be called up by either party.

It is further ordered that the Complainant file its response and affidavits on or before the 22nd day of March and that the Defendants have until March 29th for rebuttal affidavits and the further hearing of the motion is continued until said date.

(Signed) JACOB TREIBER, *Judge.*

485 UNITED STATES OF AMERICA,
Western Division of the
Eastern District of Arkansas:

Be it remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 5th day of April, Anno Domini, One Thousand Nine Hundred and Nine, at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Treiber, Judge presiding and holding said Court, the following proceedings were had, to-wit: April 5th, 1909.

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Come the Defendants by Hal. L. Norwood, J. M. Hill, W. F. Kirby, and J. H. Harrod, Esqs., their Solicitors, and file herein the affidavits of G. W. Swaim, J. E. Hampton, J. T. Jarrell, C. K. Smith, Thomas Cox, J. I. Porter, T. J. Gay, Bert C. Simon, J. J. Mandelbaum, T. F. Wharton, John W. Crockett, E. E. Russell, A. D. Allen and A. R. Bragg, in support of their motion to dissolve the injunction heretofore granted herein.

NOTE.—By direction of Counsel for defendants, all the affidavits of both complainant and defendants to the motion to dissolve the injunction herein, are omitted from this record.

CLERK.

486 And on April 6th, 1909, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Comes the Complainant by Moore, Smith & Moore, and Thomas S. Buzbee, Esqs., its Solicitors and come the Defendants, by Hal. L. Norwood, Attorney General of the State of Arkansas, and Joseph M. Hill, William F. Kirby and James H. Harrod, Esqs., their Solicitors; and the further hearing on the motion of Defendants to dissolve the injunction heretofore granted herein is now resumed,

and the hearing hereof not being concluded the same is continued until tomorrow morning.

And on April 7th, 1909, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Comes the Complainant by Moore, Smith and Moore and Thomas S. Buzbee, Esqs., its Solicitors and comes the Defendants by Hal. L. Norwood, Attorney General of the State of Arkansas, and Joseph M. Hill, William F. Kirby and James H. Harrod, Esqs., their Solicitors; and the hearing hereof not being concluded on yesterday the same is now resumed and the hearing hereof not being
487 concluded, the same is continued until tomorrow morning.

And on April 8th, 1909, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Comes the Complainant by Moore, Smith & Moore and Thomas S. Buzbee, its Solicitors, and come the Defendants by Hal L. Norwood, Attorney General of the State of Arkansas; Joseph M. Hill, William F. Kirby and James H. Harrod, Esqs., their Solicitors, and the hearing hereof not being completed on yesterday, the same is now resumed, and the hearing hereof not being completed the same is continued until tomorrow morning at half past nine o'clock.

And on April 9th, 1909, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Comes the Complainant, by Moore, Smith & Moore and Thomas S. Buzbee, Esqs., its Solicitors, and come the Defendants by Hal L. Norwood, Joseph M. Hill, William F. Kirby and James H. Harrod, Esqs., their Solicitors, and the hearing hereof not being completed on yesterday the same is now resumed; and the hearing
488 hereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

And on April 10th, 1909, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Comes the Complainant, by Moore, Smith & Moore and Thomas S. Buzbee, Esqs., its Solicitors, and come the Defendants by Hal. L. Norwood, Attorney General of the State of Arkansas; Joseph M. Hill, William F. Kirby and James H. Harrod, Esqs., their Solicitors, and the hearing hereof not being completed on yesterday the same is now resumed; and the Court having heard the arguments of Counsel thereon and not now being sufficiently advised in the premises, takes time to consider of its Judgment thereon.

And on June 1st, 1909, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

The Court being sufficiently advised as to what disposition to make of the motion to modify the temporary injunction heretofore granted in this case and which was submitted at a previous day of this term.

489 It is ordered, adjudged and decreed that, in addition to the conditions upon which the temporary injunction was granted herein the following conditions be and they are hereby prescribed by the Court:

That from the affidavits and evidence submitted the Court finds that the tariff of freight charges put into effect by the said St. Louis, Iron Mountain & Southern Railway since the granting of the temporary injunction is unreasonable, and, therefore,

It is ordered, that the freight rates pending this action to be charged by the said railway company shall be so arranged as to produce a net increase of thirty three and one third (33⅓%) per cent, of the revenue produced by Standard Distance Tariff Number Three (No. 3), put into effect by the Defendants, the Board of Railroad Commissioners, and in force at the time the temporary injunction was granted; and that the same be put into effect not later than June Seventh (7th), 1909, and continued in force until the further order of the Court, with leave to either party to apply to the Court for a modification of said Tariff, if it shall be found that it does not conform to the order of the Court in respect to the aforesaid increase in the revenue of the said St. Louis, Iron Mountain & Southern Railway Company.

And thereupon come the parties and file a tariff of freight rates which both parties believe conforms to the order of the Court and said tariff is ordered to be filed, marked Exhibit "A" to the decree modifying a temporary injunction, and made a part of the record in the cause.

It is further ordered that the security given by the said
490-520 St. Louis, Iron Mountain & Southern Railway Company upon the granting of the preliminary injunction shall in no wise be affected by this order, but shall remain liable in the same manner for the rate charged under the tariff promulgated under this order of Court as if this order had been embodied in the order granting the preliminary injunction; and a failure to comply with the schedule herein filed shall be cause *with* the dissolution of the temporary injunction.

(Signed) JACOB TREIBER, *Judge*.

Which Exhibit "A" to order modifying injunction is as follows:

(Omitted in printing per stipulation.)

521 And on the same day the following opinion of Court was filed:

In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

In re ARKANSAS RAILROAD RATES.

John M. Moore, Buzbee & Hicks, Reid & McDonough and B. R. Davidson, for Complainants.

Hal L. Norwood, Attorney General, Joseph M. Hill, James H. Harrod and William F. Kirby, for Defendants.

On Motion for Modification of Preliminary Injunctions.

TREIBER, *D. J.*:

Upon application for a temporary injunction made by the railroads of this State, and heard by Judge Van Deventer, one of the Circuit Judges of this Circuit, preliminary injunctions were granted restraining the enforcement of the intrastate rates then prescribed by the Railroad Commission of the State of Arkansas, for the transportation of freight and the two cents a mile passenger Act of the General Assembly of the State of Arkansas, approved February 9, 1907, the contention on the part of Complainants being that they were unreasonable, non-compensatory and confiscatory. At that hearing the learned Judge found from the evidence submitted that the additional cost of intrastate traffic exceeds that of the interstate of the complaining roads one hundred per cent on freight, and fifteen per cent on passenger traffic, and applying this rule to the earnings of the

roads and their values decided that, "the rates in question
522 are non-compensatory and unreasonable, and that their enforcement, although not so intended, is nothing other than a taking of the property of the railroad companies without due compensation, which is confiscation." The opinion on that hearing will be found in 163 Fed. 141.

The State Railroad Commission now applies for a modification of these temporary injunctions, alleging, that, "Since the granting of the preliminary injunctions the railroad companies have established freight and passenger rates on all intrastate business, which are unreasonable and exorbitant and are destroying many of the industries of the State." It is charged that the passenger rate has been raised to three cents a mile, and the freight tariffs put into effect, increased those prescribed by the Commission and in force at the time the temporary injunctions were granted, as follows: 50% on grain; on cotton 140%; on packing house products 100%; on coal 35%; on brick, stone and sand 75%; on lumber 107%, and other various lines of merchandise, about 75%; that the average increase on the principal commodities of the State on a revenue producing basis is over 77%, which rates it is claimed are unreasonable, extortionate and oppressive to the shippers and consumers of the State. It is, therefore, asked that the preliminary injunctions be modified so as to prevent this injustice.

That a preliminary injunction may be modified at any time whenever the ends of justice require it is beyond question. Not only may it be done by the trial court, but upon appeal by the appellate tribunal. Denver and Rio Grande R. Co. vs. United States, 124 Fed. 156, 59 C. C. A. 579. Judge Sanborn, who delivered
523 the opinion of the Court in that case said that, "a preliminary injunction may be modified when by such modification the injury or inconvenience of one or more of the litigants may be decreased without increasing the danger of loss to their opponents." And, accordingly, he modified the temporary injunction which had been granted by the lower Court. There can be no doubt that a temporary injunction can not be claimed as an absolute right, but is within the sound discretion of the Court, that discretion of course, to be controlled by the established principles of equity jurisprudence. Shubert vs. Woodward, 167 Fed. 47, — C. C. A. —. In the head note of that case, prepared by the Court, it is said, "the specific performance of contracts and the issuance of injunction are not matters of right; they rest not in the arbitrary or whimsical will, but in the judicial discretion of the Court, informed and guided by the established principles, rules and practice in equity, which are advisory rather than mandatory;" see also New York City vs. Pine 185 U. S. 93. 22 Sup. Ct. 592, 46 L. Ed. 820. Kansas vs. Colorado 206 U. S. 46, 27 Sup. Ct. 655, 51 L. Ed. 956.

Granting or refusing a preliminary injunction proper regard must be had for the comparative injury which will be sustained by the defendant if the injunction were granted, and by complainant if it were refused, and in order to prevent great injury to the Defendant when the complainant is prima facie entitled to a temporary injunc-

tion, the Court, in the exercise of its discretion, frequently resorts to the expediency of imposing terms and conditions upon the parties at whose instance it proposes to act. Russell vs. Farley, 105 U. S. 433, 438, 442, 26 L. Ed. 1060; Myers vs. Block, 120 U. S. 206,
524 214, 7 S. Ct. 529, 30 L. Ed. 644; Ewing vs. Filley, 43 Pa. St. 384, 387; Denver & Rio Grande R. Co. vs. United States 142 Fed. 625, 73 C. C. A. 621; Vogel vs. Warsing, 146 Fed. 449, 77 C. C. A. 109; McElroy vs. Kansas City, 21 Fed. 257, 264, 263 (C. C.); McCaul vs. Braham, 16 Fed. 37, 42, (C. C.); Spring Valley Water Co. vs. San Francisco, 165 Fed. 667 (C. C.); Macon R. R. Co. vs. Gibson, 85 Ga. 1, 11 S. E. 442; Careton vs. Rugg 149 Mass. 550; Kerr on Injunction (2nd Am. Ed. 30); Spelling on Injunction, p. 1031-1033. The authorities cited by Counsel for Complainants all refer to permanent, and not preliminary injunctions and for this reason are not applicable to this proceeding.

In Denver & Rio Grande R. Co. vs. United States, supra, it was said that, "The purpose of a preliminary injunction is to protect and preserve the rights of all the litigants with the least injury to each until the controversy between them can be tried and finally decided."

In Spring Valley Water Co. vs. San Francisco, supra, the question before the Court was the terms upon which a preliminary injunction should be granted against the enforcement of an ordinance fixing water rates to be charged by Complainant. Judge Farrington, in a very exhaustive and learned opinion held that,

"This Court can not control the discretion of the supervisors; it can not substitute its judgment for theirs. The power and duty of fixing water rates is cast by the Constitution on that board and not on this Court. The law nowhere provides an appeal to this Court from an ordinance adopted by the Board of Supervisors, nor does it clothe this tribunal with any authority to review, revise, cor-
525 rect or send back to that body for reconsideration an ordinance establishing the compensation to be collected for water * * *. It would seem, therefore, that the Court is limited to the determination of a single question, namely, is the ordinance confiscatory?"

And coming to the question of a preliminary injunction the learned Judge says: "It is an abuse of judicial discretion to issue an injunction which will permit one party to obtain any advantage by acting, when the hands of the adverse party are tied by the writ."

From these authorities it may be stated that a Court, when called upon to grant a preliminary injunction, may impose such terms, on granting it, as will protect the rights of the defendant as well as those of the complaining party, and if, after the temporary injunction has been granted, and before a final hearing while it is in force, it is shown to the Court that great injustice is being done by reason thereof, that the acts of the plaintiff are unjust, oppressive and unmindful of the rights of the defendant, the Court may modify it by imposing terms which will prevent such injustice.

This leaves for determination another very important matter,

Can the Court, for the purpose of requiring the complainant, who obtained the preliminary injunction, to do equity and preventing the imposition of extortionate rates for the carriage of freight and passengers, fix maximum rates beyond which complainants must not go during the pendency of the litigation, and make a compliance with these rates a condition upon which the temporary injunction will be continued? That the making of carrier's rates is a legislative
526 act and not judicial is frankly conceded by Counsel for the Defendant, and for this reason Courts are powerless to make them. Upon final hearing the Court must, if it is shown that the Commission rates are compensatory, within the meaning of the law, dissolve the preliminary injunction or make it perpetual if they are found to be non-compensatory, and therefore confiscatory. The authorities are not only numerous but harmonious on this subject. A few of the leading and late cases is all that is necessary to cite on the subject. Reagan vs. Farmer's Loan & Trust Co. 154 U. S. 362, 400, 14 S. Ct. 1054, 38 L. Ed. 1014; Interstate Commerce Commission vs. Ry. Co. 167 U. S. 479, 499, 505, 17 S. Ct. 896, 42 L. Ed. 242; Prentiss vs. Atlantic Coast Line 211 U. S. 210, 226. But when the application is for a temporary injunction the rule is different. As was said in Spring Valley Water Co. vs. San Francisco, supra,

"While it appears that the ordinance in question is probably confiscatory and therefore invalid, the fact that complainant will suffer irreparable injury unless an injunction issues is not decisive. The Court owes equal consideration to both parties; it must not issue an injunction which will do more harm to one party than good to the other; it should so preserve the matters in dispute as to protect each party as far as possible from harm. We have no means of knowing the plans of the company, whether it will raise the rates for the remainder of the fiscal year to the full amount of what is alleged to be reasonable—that *it*, so as to realize an income for more than $3,000.00 net—or whether it will be content with something less. If the ordi-
nance is finally adjudged valid, any collections made in excess
527 of the rates specified therein must be repaid. Such repayment can be secured by a proper bond; but if the ordinance is adjudged confiscatory and therefore invalid, there is no practicable remedy for the consumer, who, under the necessity of agreeing to the terms offered by the company or foregoing the use of water, contracts to pay and does pay more than is just. His injury is irreparable. It is not sufficient to say that Courts will enjoin the unreasonable charges, or that this Court will promptly dissolve the injunction, if, pending the suit, complainant abuses the process of the Court. Whether the rates so fixed by the company are reasonable or unreasonable is a question of fact which no court would presume to decide without a hearing, and such a hearing may be long and expensive. Most consumers will consider water of any quality or price cheaper than litigation. Neither conception of the status quo is satisfactory. Neither, if maintained, will afford adequate protection but to one party. If the ordinance is confiscatory, complainant is entitled to an additional sum which will make its compensation just and reasonable. This sum will be lost to complainant if the injunction is

denied. On the other hand, if the ordinance is confiscatory and the injunction is granted as prayed for, if complainant exacts a compensation in excess of what is just, the excess will be lost to San Francisco and its inhabitants. Equity, however, has no peculiar concern for the status quo, except that its preservation usually, if not always, accomplishes that which is the object of a preliminary injunction; that object is to preserve the fund, the property, the right or other thing in dispute, from waste, destruction or disturbance until the rights and equities of the contending parties can be finally considered and determined. Notwithstanding the fact that the
528 ordinance is probably confiscatory, and that its enforcement should be restrained pending suit in order to save complainant from irreparable injury, and interlocutory injunction, the effect of which is to give complainant the authority, practically without limit, to fix prices at which it will sell water, must be denied for the following reasons." He then proceeds to state the reasons which it is unnecessary to repeat here.

The effect of the preliminary injunctions is to leave the State without any regulating freight rates (it is otherwise as to the passenger rates as the statue in force at the time of the enactment of the Act of 1907 limiting them to three cents a mile is undoubtedly effective if the later Act is void. Railway Co. vs. State, 86 Ark. 363) and leaves the railroads without any limitation, so far as the laws of the State of Arkansas are concerned, to make them what they deem proper until the final determination of these causes. Assuming from the figures presented by the Complainants, and as found by Judge Van Devanter, that the rates enjoined are confiscatory or at least not sufficiently remunerative, the injunction, if the evidence at the final hearing is the same, would have to be made perpetual. In that event the rates collected during the pendency of these actions, no matter how excessive and unreasonable, and until the Commission can make new rates, rates sufficient to enable the roads to earn a reasonable compensation, will be wholly lost to the shippers. It is true, the preliminary injunction specially provided that, "Nothing recited in this order shall operate to prevent the said Railroad Commission of the State of Arkansas from establishing and enforcing any reasonable, compensatory and lawful rates, in place of those whose enforce-
529 ment is hereby inhibited." But it is not very probable, nay almost certain that any rates which may be proposed by the Commission, if less than those rates put in effect by the Complainants, which they claim are as low as they can make them, will cause further litigation, as supplementary bills would be filed to enjoin them as confiscatory. Of course, the Court could refuse to grant the injunction if the rates were not shown to be confiscatory, but in order to do that the Court would necessarily have to determine what rates were compensatory and just, and in all likelihood from evidence identical with that submitted at this hearing. As the Railroad Commission contends, and no doubt every member thereof believes that the rates now enjoined were compensatory, or, if not, that a very slight increase would make them so, the probabilities are that a number of suits would have to be filed by each of the railroads until a

tariff would be prepared which would justify the Court, acting upon the basis of apportionment of expense made in this case, and which will not be disturbed before there is a final hearing, if then, to refuse a preliminary injunction. In the meantime the rates, although they may be unjust and oppressive, would be collected.

Therefore, to prevent not only a multiplicity of suits, but to require complainants who seek equity — do equity, this Court is justified in prescribing such maximum rates as may be just to the railroad as well as the public. In Spring Valley Water Company vs. San Francisco, supra, Judge Farrington found that complainant would probably be entitled to a gross income of $266,675.60 in excess of that afforded by the rates fixed by the supervisors, and thereupon he held that complainant was entitled to so much relief but no
530 more and granted the preliminary injunction upon that condition.

It is true that in the San Francisco Water Company case there were only a few rates to be fixed while in these cases hundreds of different rates must be determined. This may necessitate a great deal more labor and may require the assistance of a special master, if the parties are unable to reach an agreement under the directions and instructions of the Court, if the Court finds that the rates put in force by the railroad companies since the granting of the preliminary injunctions are so exorbitant as to be unjust and oppressive. But this ought not to prevent the Court from doing justice and preventing a wrong. The difference is only one of degree and not of principle. If it appears from the evidence that the rates now in force are unreasonable, enabling Complainants to increase their earnings on intrastate rates to a much greater extent than is necessary to enable them to make a reasonable return on their investment, great damage will necessarily be sustained by the public who pay these rates, for some of which there can be no redress, even if the injunction should be dissolved. For the Court to refuse to act in such a case would be an injustice which no Court of equity should ever be guilty of. The bond executed by the railroad companies and the provisions made by the orders granting the preliminary injunctions, providing for an ascertainment of the damages, will only become effective if, upon final hearing, the injunctions are dissolved, but if it should appear upon that hearing that the rates while compensatory to some extent are still not sufficient to enable complainants to earn as much as in the opinion of the Court they are lawfully entitled to, the injunction would have to be made perpetual, although a small increase of the rates from five to
531 ten per cent would be sufficient to have made the rates compensatory within the meaning of the law. In such a case no recovery could be had by the Defendants, even if it should appear that the increase in the rates during the pendency of the temporary injunction exceeded one hundred per cent. And even if the injunction should upon final hearing be dissolved, the only damages which the law would permit to be recovered would be the difference between the rates paid under the increased tariff schedules and what would have been paid under the rates enjoined. In the mean time

industries may have been prostrated and whole-sale houses driven from the State, because, owing to the high rates in force during the pendency of these proceedings, they are unable to maintain their trade in competition with others located outside of the State and enjoying the benefits of lower interstate rates.

At the hearing of this application a great deal of testimony was introduced tending to show not only the extent of the increase of rates since the preliminary injunctions have been granted, but it was also shown that interstate rates from points outside of this State on business competitive with that of the business men of this State have not been increased. It appears from these affidavits that some branches of business have been practically suspended so far as intrastate business is concerned by reason of the fact that the lower rates given to competitors doing business in other States prevented them from being able to deliver to retail dealers in parts of this State their articles of manufacture at the same prices. It is true the railroads claim, and no doubt justly, that although the new intrastate rates have been in force for over five months, and no changes in
532 interstate tariffs have yet been made, they will soon put them in effect and they will be as high as those now in force on intrastate business; they claim that the changing of these tariffs requires a great deal of time; that the last few months have been the busiest of the year, and that under the interstate commerce law, before new intertsate rates can become effective, they must be filed with the Interstate Commerce Commission thirty days. The Court has no doubt that these statements are true, and that these complainants do not intend to discriminate against the people of this State whose welfare is necessary to their own existence; still the injury has been, and is still, being inflicted. While these facts would not be sufficient to justify this Court in declaring the rates exorbitant and unjust, they are circumstances which would be taken into consideration, not so much for the purpose of determining whether their present tariff is exorbitant as for the purpose of determining the propriety of the Court, sitting as a Court of equity, to exercise its power to prevent injustice to and oppression of the people of the State if the proofs show that it is being done.

This hearing was had on ex parte affidavits, testimony which can never be said to be conducive to obtaining exact facts, still as the most important testimony is based upon documentary evidence, the tariffs in force at the different times, and the income and expenditures of the roads, it is comparatively easy to ascertain the effect of these new rates.

On the part of the Railroad Commission comparative statements of the freight rates in force when the bill was filed and those put in since the granting of the preliminary injunctions, and
533 which are conceded to be correct, were introduced. These indicate that some rates have been raised over 200 per cent, and the average increase in the freight rates on a revenue basis, it is claimed; exceeds 77 per cent. On the other hand it is claimed by the railroad companies that some of the rates of the Commission

were absurdly low, and that the increase of the new rates, as shown by the earnings for the month of November, 1908, the first month the new rates went into effect (for one of the roads it is based on the earnings for the months of November and December, 1907) the increase is as follows:—

St. L. I. M. & S. Ry. Co., 41.80%
St. L. & S. W. Ry. Co., 41.59%
C. R. I. & P. Ry. Co., 24.95%
St. L. & S. F. Ry. Co., 17.77%
K. C. Southern Ry., 38.31%

or an average of the five roads of 36.75%. These calculations are based on the actual sums collected, compared with what would have been collected upon the basis of the rates enjoined. No doubt this is the most satisfactory, if not the only correct basis, for ascertaining, on a revenue basis, the actual increase of the rates, especially as these actions are based solely upon the ground that the Commission rates were so low as not to earn anything on the investment of complainants. But, can it be said that the business of one, or even two months, especially the first, after the new increased rates went into effect, is a proper criterion for the ascertainment of these facts. It is urged that during the winter months the rates which were raised the highest, fruit and vegetables, on which the average raise is from one hundred to two hundred per cent; grapes nearly
534 three hundred per cent; seeds from one hundred fifty to two hundred per cent; lumber, the largest tonnage commodity of the State, over one hundred per cent, do not move extensively during the months of November or December; and in addition thereto it is claimed, and so shown by the affidavits of a number of merchants, that immediately after notice had been given of the new rates, and for the several weeks before they went into effect, a great many merchants purchased all their goods on which the increase of rates was material, and had them shipped to their places of business, so as to obtain the benefit of the lower rates. These statements seem reasonable and fair; but, in any event, it is hardly reasonable, in view of the large variety of products in this State, to take the business of any one or two months for the proper standard for the year's business. This is fully shown by the fact that the revenue increase on a percentage basis of the different roads varies greatly; while the St. L. I. M. & S. R. R. Co., and the St. Louis Southwestern Ry. Co., report an increase of nearly 42%, the St. L. & S. F. Ry. Co., shows an increase of only 17.77%, and the Rock Island Railway an increase of less than 25%. No doubt the fact that the industries, as well as the products, mineral, forest and agricultural, along the line of the latter roads are different from those of the other roads, accounts for this difference. The fact that 40% of the entire tonnage of the intrastate business of the State is that of lumber and forest materials, for which the tariff has been raised over 100%, is of itself sufficient to show that the business for the months of November and December would hardly be proper tests for the business of the railroads of the State for the year, for there are hardly any

months during the year in which there is less building ma-
535 terial used than during those months. In addition to this, it must not be overlooked that the rates are not raised horizontally, but run from 3% to over 200%. Defendants have submitted some calculations based on a large number of freight bills, paid during the five months the rates have been in force. These show an average increase on a revenue basis of over 77%. But they can not be accepted as a proper test for several reasons. It has been shown that these bills constitute but a little over 1% of the freight earnings during that time, and there is nothing to show that these bills cover those rates which have been but slightly raised, say from 3% to 20%, as well as those which were increased greatly. The probabilities are that shippers would pay but little attention to small increases and furnish only such bills as indicated what they considered excessive rates. Taking the two tariff sheets, those in force at the time the injunction was granted, and those now in operation, with the percentages of increases as figured out by the experts of Complainants, and admitted by defendants to be correct, it is reasonable to say that the increase will exceed on a revenue basis considerably over 50%.

On behalf of the complainants it is also claimed that these large increases are based on the Commission rates which were much lower than the rates in force before the Commission was created, and the tariff then in force is offered in evidence to show that the present rates are but slightly, if any, in excess of those then in force. The tariff sheet offered is that of the St. Louis, Iron Mountain & Southern Railway Co. 1508-A, but it is shown that that tariff was only nominally in effect; that the real tariff was Number 3315,
536 called the "Jobber's Tariff" on which most of the freight traffic was carried, and in addition to this, there were special rates for almost every commodity in the State and that only a few of the small shippers who were ignorant of the tariff schedules were charged rates under 1508-A; that the Commission tariffs were but slightly lower than tariff Number 3315, and higher than many of the special tariffs in force at that time.

As to the special tariffs, the Court is satisfied from the evidence that they were made very low, in many instances below the cost of carriage, for the purpose of aiding in the establishment of new industries along the lines of railroads, and by these means build up the country, and thus, indirectly, increase the business and earnings of the trade. Such rates, which were not illegal at the time, can not be considered as a fair test for the purpose of determining what would be compensatory rates. That the Commission did make material reductions, even from the "Jobber's Tariff," No. 3315, has been fully established, but it is doubtful whether they amounted to as much as twenty per cent, although the Commission in its first report, claimed credit for having made reductions exceeding thirty per cent. But in considering this claim of the Commission, the Court is satisfied that in making it they were influenced by the fact that many of the large shippers who had theretofore enjoyed special rates, and which were lost by the acts of the Commission, which prohibited

discriminations, had attacked the acts of the Commission and were urging the repeal of the statute creating it. A twenty per cent reduction is a liberal estimate for the tariff of the Commission.

On the part of the Defendants it is also urged that these rates had been in force for eight years without any complaint on the
537 part of the railroads, or any effort to restrain them, and for this reason it is claimed a strong presumption arises that they were not only not confiscatory, but were just and fair. It is true that in the absence of any proof, such acts of the railroads would raise a strong presumption that the rates were compensatory, a presumption as strong as that rates made by legislative authority are fair and reasonable; still, it is only a presumption and may be rebutted. For that purpose it has been shown that the Commission rates were only submitted to under vigorous and continuous protests, and after it had been fully established by fair trial that these rates were confiscatory did the railroad companies feel justified in invoking the aid of the Courts to prevent what they consider a great injustice to them. In addition to that, it has been shown that since then there has been a continual increase in the operating expenses of the railroads in this State. The taxes have been more than doubled since the Commission first established its tariff; the cost of materials necessary for the operation of the trains and maintenance of the tracks, has increased largely; wages of all employés have been raised very materially; the legislation of the State, while no doubt prompted by the best motives, for the purpose of protecting the lives and property of its citizens, has greatly increased the operating expenses of all railroads in this State. The fellow servant rule of the common law has been abolished; railroads are made liable for all losses sustained by fires caused by sparks from locomotives, regardless of any question of diligence or negligence; the hours of labor of some of their employés have been shortened by statute; additional brakemen are required for freight trains; every
538 locomotive is required to be provided with powerful electric headlights; many new stations have been established; in some of the cities through which the roads run, they have been required to erect viaducts over some of the streets to prevent injury to persons using these streets; heavy penalties have been prescribed to secure prompt payment of wages of employés; and many other matters deemed necessary for the protection of property and the lives and comfort of the public are now prescribed by statute which were not required eight years ago. All of these add very much to the financial burden of these companies. These facts must, of course, be taken into consideration for the purposes of determining what rates are compensatory. As stated by this Court in Kansas City Southern Railway Company vs. Board of Railroad Commissioners, 106 Fed. 353, 358 (affirmed in 187 U. S. 617), in speaking of such additional expenses necessarily incurred by reason of the enactment of such laws by the different States, "And perhaps in consideration of these additional burdens imposed on railroads, it (the State) may allow a greater charge for the transportation of passengers as well

as freight through its territory than neighboring states in which no such burdens are imposed."

That the large increase in their business caused by the development of the natural resources of the State, as well as the rapid growth of its population; the use of improved machinery and rolling stock; the improved condition of the road beds after they are used for a number of years, enable the companies to carry freight, as well as passengers at a lower rate than formerly can not be doubted, but proofs now before the Court would hardly justify a finding that there has not been some increase in the cost of the operation
539 of trains in this State within the last few years, since the Commission rates went into effect, increases which were gradual but continuous.

Giving due weight to these facts, the next inquiry to be made is what rates would enable them to earn reasonable returns on their investments? So far as the passenger rates are concerned, it is, of course, easy to ascertain the increase, as the rate was raised from two cents to three cents a mile, an increase of fifty per cent; but, it is claimed that in view of the reduced rates received from the sale of mileage books, and the reductions usually offered to the public as excursion rates, when it is sought to attract large crowds for certain occasions, usually of a public nature, and reduced rates furnished to ministers of the Gospel, the actual increase in the gross receipts on passenger rates is only about thirty five per cent.

A three cent a mile rate in view of the fact that, comparatively speaking, this State is but sparsely settled and that there are no large cities in it, is not so unreasonable that the Court would feel justified upon the showing made by the roads, indicating a considerable loss on its intrastate passenger traffic, while the two cents a mile rate was in force, to disturb it while these proceedings are pending. Besides, it is well settled that for the purpose of determining whether rates are confiscatory or not, all sources of revenue must be considered. Minnesota & St. Louis R. R. Co. vs. Minnesota, 186 U. S. 257, 22 S. Ct. 900, 46 L. Ed. 1151; Seaboard Air Line Co. vs. Florida, 203 U. S. 261, 27 S. Ct. 109, 51 L. Ed. 175; Atlantic Coast Line R. R. Co. vs. North Carolina Corporation Commission, 206 U. S. 1, 27 S. Ct. 585, 51 L. Ed. 933.

540 The increased earnings from one class of traffic will, therefore, justify a corresponding decrease in another class, if the net earnings from all sources are compensatory. For this reason, if the net earnings on passenger traffic are larger, that fact would be considered in determining whether the freight tariffs fixed by the complainants are too high, and also aid in determining what they should be. It is true that lower passenger rates are felt more generally, and for this reason are more fully appreciated by the large majority of the public than lower freight rates, which are not felt so readily by the consumer, the same as the collection of direct and indirect taxes. But, so far as the interests of the public at large are concerned, it is of much more importance to them to enjoy the benefit of the lower freight rates than passenger rates, provided the latter are not excessive or unreasonable. High freight

tariffs not only directly affect the prices of commodities to the consumer, but may seriously cripple, if not totally destroy, manufacturing industries, and the business of wholesale dealers, if higher than those charged from competitive points outside of the State, as it is the price at the place of delivery which will control the trade. As the injunction against the enforcement of the two cents a mile passenger rate as being confiscatory and therefore violative of the provisions of the national constitution, leaves the three cents a mile statute, St. L. I. M. & S. Ry. Co. v. State 86 Ark, 343 (Sec. 6611, Kirby's Digest of the Statues of Arkansas) in full force, and this rate has been put in operation by the railroads since the
541 granting of the temporary injunction, this change, therefore, adds to the net earnings of the complainants at least thirty five per cent without any corresponding increase of expenditures. Whether the railroad companies should not be charged with a fifty per cent increase in these rates, in view of the fact that the reduction below three cents a mile is voluntary on their part, and not in pursuance of any act of the legislature or the Commission, need not be determined at this time, although in view of the decisions of the Supreme Court, it is very doubtful whether the railroads, if they exercise this power, can be heard to complain if by reason thereof their earnings are not compensatory. In Lake Shore, etc. R. R. Co. vs. Smith, 173 U. S. 684, 696, 19 S. Ct. 565, 43 L. Ed. 585, it was held that the State had not the power to enact such legislation without violating the national constitution, and in Knoxville vs. Knoxville Water Co., 212 U. S. 1, S. Ct. 148, it was expressly held that if the company sees proper to make reductions in special cases when not required to do so by law, the decrease, by reason of such reduction can not be considered by the Courts in determining the reasonableness of the rates fixed by law. The Court there said:

"The Company, it is true, might, if it chooses, allow such a discount (a discount of 5% for prompt payments) from the ordinance rates, but the ordinance required no discount from the rate established by it, and the company, therefore, was bound to offer none. If it stood upon the letter of the ordinance, as it had the right to do, and exacted from the consumers the full charge prescribed by the ordinance, the amount which would have been realized
542 would have been over four thousand dollars more than that found by the master."

But, as this case is not now before the Court for final determination and in view of the fact that the public is the beneficiary of these reduced, special rates, they being general and uniform, and the further fact that in this motion to modify the injunction the Court is asked to require a reduction of passenger rates, it is unnecessary at this time, to determine that question, but for the purpose of ascertaining the earnings of complainants, the Court will charge them with an increase of thirty five per cent.

As to what constitutes a reasonable rate must depend upon the facts of each case, and can not be determined without reference to the interests of the public. Covington & Lexington Turnpike Co.

vs. Sanford, 164 U. S. 378, 17 S. Ct. 198, 41 L. Ed. 560; Smyth vs. Ames, 169 U. S. 545, 18 S. Ct. 418, 42 L. Ed. 819; Reagan vs. Farmer's Loan & Trust Co., Supra; San Diego Land Co. vs. National City, 174 U. S. 739, 755, 19 S. Ct. 804, 43 L. Ed. 1154; Chicago & Northwestern R. R. Co. vs. Dey 35 Fed. 866, 878.

In Covington, etc. Turnpike Co. vs. Sandford, the Court said:

"It can not be said that a corporation is entitled of right, and without reference to the interests of the public, to realize a given per cent upon its capital stock."

This was quoted with approval in Smyth vs. Ames, and the Court there added:

"It can not, therefore, be admitted that a railroad corporation maintaining a highway under authority of the state, may
543 fix its rates with a view solely to its own interests and ignore the rights of the public. But the rights of the public would be ignored if rates of transportation of persons or property on a railroad are exacted without reference to the fair value of the property used for the public or the fair value of the services rendered, but in order simply that the corporation may meet operating expenses, pay interest on its obligations, and declare a dividend to its stockholders."

Another matter which is entitled to consideration is the fact which has been brought out at this hearing, that the St. Louis, Iron Mountain & Southern Railway Co. and the Chicago, Rock Island & Pacific Ry. Co., have, within the last few years, and since the establishment of the Commission rates, constructed extensive branch lines through new and unsettled sections of the State; that these lines were constructed at great expense, owing to the fact that the greater part of these branches runs through a swampy country, some of it subject to overflows, which necessitated high embankments; that these roads were built principally to serve as feeders for the main line, and at the same time enable these roads to obtain shorter lines for that part of its interstate traffic, which merely passed through the State. These are matters which must be taken into consideration in determining what would be proper net earnings on the investments. It would hardly be proper for the Courts to say that such roads are entitled to as great a compensation, on their investments, from intrastate business as the ordinary roads built for the accommodation of the intrastate as well as the interstate business. As is well known some of the Pacific Roads traverse the desert for hundreds of miles through a strip of territory where there is
544 practically no intrastate business, either freight or passenger. Would it be proper, in such cases, to hold that the road should have the right to charge for its intrastate traffic in that section tariff rates high enough to enable it to earn a certain, fixed percentage on its investment? Would not in such a case, the rates have to be so high as to be confiscatory of the property of the residents of that State? Must the public guaranty the railroads a certain income on their investment, regardless of the condition of the country traversed, or whether bad judgment was exercised in the selection of the route? We do not think so. New lines or branches to increase

the business of the trunk line, or the exercise of bad judgment in the building of a railroad are matters to be considered in determining what rates would be fair and just to the corporation as well as the public. That the railroads are entitled to reasonable profits on their investments, and the public to reasonable rates, or, to express it differently, that the rights of the public and railroad companies are reciprocal, is the correct rule of law.

In Reagan vs. Farmer's Loan & Trust Co., supra, Mr. Justice Brewer, speaking for the Court, in the concluding part of the opinion, said:

"It is unnecessary to decide, and we do not wish to be understood as laying down as an absolute rule, that in every case a failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable. And yet justice demands that every one should receive some compensation for the use of his money or property, if it
545 be possible without prejudice to the rights of others. There may be circumstances which would justify such a tariff; there may have been extravagance and a needless expenditure of money; there may be waste in the management of the road; enormous salaries, unjust discrimination as between individual shippers, resulting in general loss. The construction may have been at a time when material and labor were at the highest price, so that the actual cost far exceeds the present value; the road may have been unwisely built, in localities where there is not sufficient business to sustain a road. Doubtless too, there are many other matters affecting the rights of the community in which the road is built as well as the rights of those who have built the road." 154 U. S. 412.

In San Diego, etc., Co. vs. Jasper, 189 U. S. 439, 446, 23 S. Ct. 571, 47 L. Ed. 892, is was held,

"If a plant is built, as probably this was, for a larger area than it finds itself able to supply, or, apart from that, if it does not, as yet, have the customers contemplated, neither justice or the Constitution requires that, say,—two-thirds of the contemplated number should pay a full return."

Nor is it required that the particular rate of compensation must in all cases and in all parts of the Country be the same. Wilcox vs. Consolidated Gas. Co., 212 U. S. 19, 29 S. Ct. 192.

Guided by these principles, the Court is of the opinion
546 that rates which will enable the complainant to earn six per cent on their investment, if fairly entitled thereto by prevailing conditions, would be reasonable, especially in view of the fact that a large part of the money used in the construction of these roads was obtained from loans secured by mortgage, and these loans only bear from four to five per cent interest per annum, thus leaving a larger return for the stockholder, who, of course, is secured, and in case of insolvency of the company would be postponed until the mortgage bondholders are paid in full. For these reasons, the risk of the investment of the stockholder being greater than that of the bondholders, he is entitled to a higher rate of interest on his in-

vestment. In determining what rates would be just and reasonable, the Court is relieved of passing upon conflicting evidence for the purpose of determining the value of the investment. Complainants in their bills, only ask for compensatory rates on the value of the roads, as determined by the State Board of Railroad Assessors for the purpose of taxation. The assessments in this State are conceded to be upon the basis of fifty per cent of the actual value of the property, and they therefore ask to be permitted to earn fair dividends on double the amount their roads are assessed for taxes. (This does not apply to the branch line of the Rock Island, lately constructed, and which is assessed at a nominal value.) For the purpose of determining how much of that amount should be taken into consideration for the intrastate traffic calculations were made by expert accountants under the direction of Judge Van Deventer and the calculations adopted by him for the purpose of passing upon
547 the motions for preliminary injunctions are now adopted.

While the revenues of the roads, and especially the increased earnings since the new rates, pending this litigation, have been put into effect, vary somewhat, it is impossible to make different rates for each road. The fact that in most of the larger cities of the State two or more of the roads compete for business, and therefore must carry freight at the same rates would prevent making different rates, and the tariffs prepared by the roads themselves are practically uniform.

The values of the roads for the intrastate traffic, as ascertained by the accountants and adopted by Judge Van Deventer, are as follows:—

St. L. I. M. & S. Ry. Co.	$12,880,982.44
St. L. & S. W. Ry. Co.	4,774,880.82
C. R. I. & P. Ry. Co.	5,200,422.39
St. L. & S. F. Ry. Co.	3,519,791.41

The earnings of these roads for the last six months of the year 1907, calculated on a revenue basis, allowing for the greater cost of intrastate business, one hundred per cent on freight, and fifteen per cent on passenger traffic more than for interstate business, as determined by Judge Van Deventer in these cases, are as follows:

Name of Road.	Gross Frt. Ernngs.	Frt. Exp.	Gross Pass. Ergs.	Pass. Expenses.	Net Loss.
St. L. I. M. & S. Ry. Co.	$640,248.17	$800,041.29	$836,542.20	$865,423.66	$188,674.58
St. L. & S. W. Ry. Co.	.....	.....	.....	.....	43,319.22
C. R. I. & P. Ry. Co.	210,813.57	372,913.48	253,395.52	220,750.00	129,454.39
St. L. & S. F. Ry. Co.	139,002.89	218,917.65	187,173.87	176,493.67	69,234.57

NOTE.—The returns of the St. L. & S. F. Ry. Co. were only for four months and in order to make them uniform with the others this table shows the earnings and expenditures for six months. 50% has been added and is included in the above. The returns of the St. L. & S. W. Ry. Co. include the earnings for the entire year ending June 30, 1908.

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549 In addition to these earnings each of the roads also showed the receipt of considerable sums from what is called "Miscellaneous Earnings," which are not included in the above tables. These earnings come principally from mail and express, but there is nothing in the evidence to show whether these items caused a net profit or not, as the auditors testified that it is impossible to divide them between intra- and interstate business. These earnings were as follows, and constitute the percentages of the entire business of the roads as shown by the figures on the following table:

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550 *Miscellaneous Earnings.*

Name of Road.	Gross Frt. Ernge.	Percentage.	Gross Pass. Ergs.	Percentage.	Total Gross Earnings.
St. L. I. M. & S. Ry. Co.	$122,814.41	2.51%	$373,785.47	21.01%	$496,599.88
C. R. I. & P. Ry. Co.	19,033.43	1.48%	78,940.50	11.29%	97,940.50
St. L. & S. W. Ry. Co.	46,228.88	1.43%	154,285.75	17.14%	200,514.63

NOTE.—The St. L. & S. F. Ry. Co. did not include this item in its statement, but it would probably average the same proportion to the entire business as that of the other roads.

551 For the purpose of these proceedings, the Court is of the opinion that an increase of 33⅓% on the tariff of freight rates in force at the time these injunctions were granted, the increase to be calculated upon a revenue basis, will enable complainants to earn a reasonable compensation when added to the increased passenger rates, and at the same time prevent the exaction of unjust and unreasonable rates from the public. Calculating the increase of revenue upon that basis, the net earnings for a year, assuming that the business will be the same as it has been, will be as follows:

Road.	Incrs. in Frt. Ergs.	Incrs. in Pass. Ergs.	Total.	Net Income.
St. L. I. M. & S. Ry. Co	$426,833.12	$585,579.40	$1,012,412.52	$635,063.36
St. L. & S. W. Ry. Co	116,112.53	154,158.42	270,270.95	226,951.73
C. R. I. & P. Ry. Co	140,542.38	177,376.85	317,919.23	59,010.45
St. L. & S. F. Ry. Co	92,668.59	131,021.45	223,690.04	85,220.90

The net income will allow the companies a profit on their respective investments, as follows:

St. L. I. M. & S. Ry. Co.	over 5%
St. L. & S. W. Ry. Co.	" 4.8%
C. R. I. & P. Ry. Co., a little less than	1½%
St. L. & S. F. Ry. Co. about	2½%

These figures indicate that some of the roads would earn but a very small dividend on their investment so far as the intrastate traffic is concerned, but it is impossible, for the reasons hereinbefore stated, to provide the same earnings for roads whose conditions differ so widely as these do. The St. Louis, Iron Mountain & Southern Co., which does the largest proportionate intrastate business, will earn over five per cent on its investment. In view of the fact that it has built two very extensive branches lately
552 through a country having but few inhabitants and no industries, lines intended primarily for its through interstate business, so as to enable it to have a short line from the west to the Gulf of Mexico, this is a very reasonable and fair compensation. The St. Louis, South Western Ry. Co., which does the much largest proportionate intrastate business, will earn nearly 5% on the basis of its earnings for the year ending June 30, 1908, which included the first six months of the year 1908, when confessedly traffic was the smallest. Lumber which is its largest tonnage, was practically not moving at all during that time. At the final hearing, the evidence will, no doubt, show what should be considered as earnings for ordinary times. The St. Louis & San Francisco Ry. Co., although it has a large mileage in the State, does but a comparatively small intrastate business, as shown by its statement hereinbefore set out. Its gross earnings on both passenger and freight traffic being only about nine per cent of its valuation. The earnings of the Chicago, Rock Island & Pacific Ry. Co., seem to be the smallest in proportion to its investment, but a new branch line of 147 miles is included at a valuation of $3,000,000.00, although assessed at less than $300,000.00, by reason of that fact that it was but recently built through a swampy section of the State, has been but a short time in operation and was intended principally for its through interstate business. A computation of the earnings of each of the roads from its intrastate business, as compared with its valuation, as shown by their statements, will show practically
553 the same differences:

Road.	Net loss for year.	Percentage of loss on capital invested in intrastate traffic.
St. L. I. M. & S. Ry. Co.	$377,349.16	About 2.9%
St. L. S. W. Ry. Co.	43,319.22	" .9%
C. R. I. & P. Ry. Co.	258,908.78	" 5 %
St. L. & S. F. Ry. Co.	138,469.14	" 3.9%

As the country traversed by these roads is being rapidly settled, and new industries and manufacturing plants are springing up along these lines, the intrastate business will, in all likelihood, increase rapidly. In any event, unless different rates should be made for each road, according to its location, cost of building, judgment in selection of the line, it is impossible to fix any rates which will enable each of the roads to earn the same dividend. The tariffs which they have put in effect are the same for all of the roads, and for the reasons hereinbefore stated, it would be impracticable to do otherwise.

As these suits will necessarily require considerable time before the final decrees can be rendered, either party may at any time apply to the Court for a modification of this order, if, after a fair trial, it is found that the rates are unjust to either party. The Railroad Commission, the Court is informed, has prepared a freight tariff, which, in its opinion, would increase the net revenue of these roads from freight traffic thirty three and one third per cent. Copies of these schedules should be furnished immediately to the complain-
554 ants, and the Court has no doubt that if these tariff sheets are found to be inaccurate and will not produce such an increase in revenue, the parties can agree among themselves to make such changes as will bring about that result. Should they be unable to do so, the Court will refer the matter to a Special Master for the purpose of preparing such tariff rates.

A decree modifying the injunctions now in force, in conformity with the views herein expressed may be prepared by the parties and submitted to the Court.

Endorsed on back thereof: Filed June 1, 1909. W. P. Feild, Clerk.

555 And on June 23, 1909, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

On this day come the parties in the said case, and it is thereupon ordered that Complainant execute a bond to the United States of America in the sum of Eight Hundred Thousand Dollars, signed by itself, without additional sureties, conditioned that it shall, on and after July 1st, 1909, issue to each person purchasing a ticket or paying cash fare upon the train from one point in the State of Arkansas to another point in the same State, and confined exclusively to intrastate travel, a certificate or coupon showing the amount paid by such passenger for such ticket and the date thereof; and to every shipper or consigned when paying freight on any commodity shipped from one part of the State of Arkansas to another part and which is wholly the subject of intrastate traffic a

receipt or freight bill showing the amount charged for the carriage of such freight, and also endorsed on the same bill the amount or rate which would have been charged had the inhibited rates continued in force; which receipt or coupon or freight bill shall be prima facie evidence of the amount paid and the date of payment. The Complainant shall keep a correct account, showing as respects the carriage of freight and passengers, the difference between the amount actually charged and that which would have been charged had the inhibited rate been applied, and further conditioned that if it should eventually be decided that so much of this order
556 as inhibits enforcement of the rates prescribed by the Railroad Commission of the State of Arkansas in Distance Tariff No. 3, and the two cents per mile rate prescribed by the Statute of 1907, should not have been made, that the Complainant shall refund to the owners and holders of the certificates issued by it the excess charges as shown by the same, provided, however, that such certificates as to the amounts and dates shall only be prima facie evidence of these facts.

Such bond shall be in addition to the bond heretofore executed and not in lieu thereof.

(Signed) JACOB TREIBER, *Judge*.

And on June 30, 1909, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

The Complainant Railway Company shall submit to examination and inspection of the Railroad Commission, and its Counsel and its experts and accountants, all its books, records, vouchers, reports, pay rolls, receipts, contracts and any other documents or writing relating to its intrastate business in the State of Arkansas, kept either in its general office, or in any station, upon reasonable notice to the General Auditor of the Complainant, or the person in charge of the Auditor's Office, and at such examination the Complainant may be present by its employés.

557 The information obtained by the Defendant Commission under this order shall not be divulged for any other purpose than the defense of these suits.

It is further ordered that should any employé of the Commission, or any person obtaining information by reason of these proceedings, divulge information obtained hereunder otherwise than herein provided, or conduct himself in an improper or obnoxious manner the Special Master shall report the same to the Court, in order that the Court may inflict punishment on him as for contempt, and also disbar him from further employment in the examination or investigation herein provided.

That for the purpose of ascertaining any facts relevant to the

issues involved in this action, it is necessary to examine books, reports or other papers in which interstate business as well as intrastate matters are kept, Defendant Commission, their agents and employés, shall have access to such books, reports and papers in the same manner as is provided herein for those relating to intrastate business alone.

That all matters referred to the Master in Chancery herein, in which the parties are unable to agree, the Master is authorized to determine the matters in dispute.

(Signed) JACOB TREIBER, *Judge*.

And on July 1, 1909, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
vs.
ROBERT P. ALLEN et al.

558 On this day come the parties hereto, the cause being at issue, and ask the appointment of a Commissioner to take the testimony herein, it being agreed that same may be taken on oral interrogatories, and that the testimony taken in this case and also in that of the St. Louis Southwestern Railway Company vs. Robert P. Allen et al., pending herein, may be used in each of these cases as though same were consolidated and heard together as far as applicable.

And the Court being advised that the testimony can not be produced in the usual time,—It is therefore considered and ordered that P. C. Dooley, Esq., the standing Master of this Court, be and he is hereby directed to take said testimony, with full power to compel the attendance of all witnesses and require the examination and production of all books, papers, writings, accounts, vouchers and other documents necessary; and that the Plaintiff shall have sixty days, if necessary, in which to produce its testimony before said Master, beginning October 1st, 1909; that the Defendant shall produce their testimony in sixty days, beginning at the end of said sixty days allowed Plaintiff, or when the Plaintiff's testimony is finished, if it shall conclude before the expiration of said sixty days; and that each party shall have thirty days after the finishing of the taking of testimony in chief for the production of evidence in reply or rebuttal; and this order having been made on June —th, 1909, but not entered of record, it is ordered by the Court that it be entered now for then.

(Signed) JACOB TREIBER, *Judge*.

559 And on the same day the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RY. CO.
v.
ROBERT P. ALLEN et al.

Comes the Complainant, by John M. Moore, Esq., its Solicitor, and files herein its replication to Answer of Defendant; and leave for filing said replication having been obtained on June 2nd, 1909, but not entered of that date, it is ordered by the Court that this entry bear date as of June 2nd, 1909.

Which replication is as follows:

United States Circuit Court, Western Division of the Eastern District of Arkansas. In Chancery.

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO., Complainant,
versus
ROBERT P. ALLEN et al., Defendants.

This replicant, St. Louis, Iron Mountain & Southern Ry. Company, saving and reserving to himself all and all manner of advantages of exceptions which may be had and taken to the manifold errors, uncertainties and insufficiencies of the Defendants, Robert P. Allen, John W. Crockett and John E. Hampton, for replication thereunto saith that he doth and will aver, maintain and
560 prove his said bill to be true, certain and sufficient in the law to be answered unto by the said Defendant, and that the answer of the said Defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this replicant is ready to aver, maintain and prove, as this Honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

MOORE, SMITH & MOORE,
Solicitors for Complainant.

Endorsed on back: Filed June 2, 1909. W. P. Feild, Clerk.

And on July 5, 1909, the following proceedings were had, towit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RY. CO.
v.
ROBERT P. ALLEN et al.

Comes the Complainant by John M. Moore, Esq., its Solicitor and files herein its additional bond for eight hundred thousand dollars

($800,000.00) as required by order of Court dated June 23, 1909 and said Bond having been examined by the Judge of this Court the same is approved.

Which bond is as follows:

561 Know all men by these presents: That the St. Louis, Iron Mountain & Southern R'y Company is held and firmly bound unto the United States of America in the penal sum of Eight Hundred Thousand Dollars ($800,000.00), for the payment of which it hereby binds itself, its successors and assigns.

The conditions of this obligation are such that:

Whereas, in a suit of the above bounden (a corporation) against Robert P. Allen, John W. Crockett and John E. Hampton, Railroad Commission of the State of Arkansas, and Henry Leigh and George McLean, an order of temporary injunction was issued enjoining and restraining the Defendant Railroad Commissioners of the State of Arkansas from enforcing certain freight and passenger rates in said State; and,

Whereas, it was subsequently ordered in said proceeding:

"That Complainant execute a bond to the United States of America in the penal- of Eight Hundred Thousand Dollars, ($800,000.00), signed by itself without additional sureties, conditioned that it shall, on and after July 1, 1909, issue to each person purchasing a ticket or paying cash fare upon the train from one point in the State of Arkansas to another point in the same State, and confined exclusively to intrastate travel, a certificate or coupon showing the amount paid by such passenger for such ticket and the date thereof; and to every shipper or consignee when paying freight on any commodity shipped from one part of the State of Arkansas to another part, and

562 which is wholly the subject of intrastate traffic, a receipt or freight bill, showing the amount charged for the carriage of such freight, and also endorsed on the same bill the amount or rate which would have been charged had the inhibited rate continued in force; which receipt or coupon or freight bill shall be prima facie evidence of the amount paid and the date of payment. The Complainant shall keep a correct account showing as respects the carriage of freight and passengers, the difference between the amount actually charged and that which would have been charged had the inhibited rates been applied, and further conditioned that if it should eventually be decided that so much of this order as inhibits enforcement of the rates prescribed by the Railroad Commission of the State of Arkansas in Distance Tariff No. 3 and the two cents per mile passenger rate prescribed by the Statute of 1907, should not have been made, that the complainant shall refund to the owners and holders of the certificates issued by it, the excess charges as shown by the same, provided, however, that such certificate as to the amounts and dates shall only be prima facie evidence of these facts;" and,

Now, therefore, if the said St. Louis, Iron Mountain & Southern Railway Co. shall comply with and perform each and all of the terms, conditions and provisions above set forth, and shall issue the certificates or coupons to passengers, receipts or freight bills to shippers and consignees and keep the accounts as required by said

563 order to be kept, and make the payments or refunds as therein provided to be made, if it should be eventually decided that

so much of said order of injunction as inhibits the enforcement of said inhibited rates should not have been made, then this obligation shall be null and void, otherwise to remain in full force and effect.

In witness whereof, the said St. Louis, Iron Mountain & Southern Ry. Co. has caused these presents to be executed this the third day of July, 1909.

[SEAL.] ST. LOUIS, IRON MOUNTAIN & SOUTHERN RY. CO.,
By C. S. CLARKE, *Vice-President.*

Attest:
F. W. IRLAND, *Assistant Secretary.*
Approved:
JACOB TREIBER, *Judge.*

Endorsed on back: Filed July 5th, 1909. W. P. Feild, Clerk.

564 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 4th day of April, Anno Domini, One Thousand Nine Hundred and Ten, at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Treiber, Judge presiding and holding said Court, the following proceedings were had, to-wit: June 10, 1910:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Comes P. C. Dooley, Esq., Master herein and files his report and petition for an allowance on account of services and expenses.

Which Report of Master is as follows:

565 In the United States Circuit Court, Western Division of the Eastern District of Arkansas. In Chancery.

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

To the Honorables the Judges of said Court, Honorable Jacob Treiber, Judge Presiding:

Your Master has the honor to report progress to date in the hearing before him in this cause.

October 1, 1909 was fixed by the Court as the time for the hearing

to begin. The Plaintiff not being ready, the hearing was postponed and begun on November 10, 1909, at St. Louis, Mo.

The Plaintiff closed the hearing and the taking of its testimony in Chicago, on January 29, 1910.

The volume of direct testimony taken by the Plaintiff at the hearing before the Master is about 4000 folios, all taken in St. Louis and Chicago.

The taking of testimony on the part of the Defendants was begun before the Master on the 19th day of April, 1910 and is not yet finished.

Your Master further shows to the Court that he has filed with the Clerk of this Court the direct testimony taken at the hearings before him by the Plaintiff, consisting of 1418 pages and forty nine exhibits of various kinds in five volumns.

Your Master further shows that he has paid out
566 as necessary expense, in connection with the hearing, and taking of testimony on the part of the Plaintiff, the sum of..... $317.85
And in relation to the taking of testimony on the part of the Defendants, to date, the sum of..... 151.25

Total..... $469.10

Your Master begs leave to suggest further that he has been paid nothing for his services, nor for his expenses, and inasmuch as the hearing and taking of testimony is likely to continue several more months, the Master asks that he be reimbursed the sum expended by him as above shown; and that he be made a partial allowance for his services in the sum of $2000.00. That the Court direct by whom it shall be paid and that it be paid at once.

Very respectfully submitted,

P. C. DOOLEY, *Master.*

Endorsed on back: Filed June 8, 1910. W. P. Feild, Clerk, by W. Presley Feild, D. C.

And on the same day the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Now, on this day comes the Complainant, St. Louis, Iron Mountain & Southern Railway Company, by its Solicitor John M.
567 Moore, Esq., and the Defendants Robert P. Allen et al., by their Solicitor, William F. Kirby, Esq., and the application of P. C. Dooley, Master herein, for the payment to him of the sum of Four Hundred and Sixty Nine Dollars and Ten Cents ($469.10), for money disbursed by him as necessary expense of the Master to

date in relation to the hearing herein and that he be allowed and paid the sum of Two Thousand Dollars ($2000.00) as a partial payment on account of services, as Master, coming on for hearing and upon consideration thereof,—

It is considered, ordered and adjudged that the Master be and he is allowed the sum of Four Hundred and Sixty Nine Dollars and Ten Cents ($469.10) for his expenses to date; and the sum of Two Thousand Dollars, ($2000.00) as partial compensation on account of his services as Master.

That the Complainants St. Louis, Iron Mountain & Southern Railway Company, and St. Louis South Western Railway Company, pay one half of said sum—$1234.55—and that the Defendants, Robert P. Allen, et al., pay one half thereof, $1234.55—which said sums shall be taxed by the Clerk of this Court as costs in this case.

(Signed) JACOB TREIBER, *Judge.*

And on July 5, 1910, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

568 Now, on this day come the parties to said cause by their respective Solicitors, and it is ordered that the taking of testimony in rebuttal on the part of the Plaintiffs be postponed until the 26th day of September, 1910.

And on September 29th, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al., Railroad Commissioners, &c.

P. C. Dooley, Esq., the Standing Master in Chancery who was directed to take the proof in these causes having died and there still being some evidence to be taken herein, it is ordered by the Court that Charles M. Rice, Esq., be and is hereby appointed Special Examiner to take the proofs offered in the above entitled causes with all the powers of and subject to the direction given by the Court to the said P. C. Dooley, Esq., in these causes.

(Signed) JACOB TREIBER, *Judge.*

And on October 1, 1910, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al., Railroad Commissioners, &c.

Comes Charles M. Rice, Esq., heretofore appointed Special Examiner to take the proof offered in the above entitled cause
569 and files herein his oath as such Special Examiner, which is as follows:

"UNITED STATES OF AMERICA,
Eastern District of Missouri:

I, Charles M. Rice, do solemnly swear that I will support the Constitution and laws of the United States and that I will faithfully discharge the duties of Special Examiner in the causes of St. Louis, Iron Mountain & Southern Railway Company vs. Robert P. Allen, et al., State Board of Railroad Commissioners of Arkansas, No. 1637 and St. Louis Southwestern Railway Company against same Defendants, No. 1636, pending in the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas, to which position I have been appointed by the said Court.

(Signed) CHARLES M. RICE.

Subscribed and sworn to before me this 30th day of September, A. D., 1910.

[SEAL OF SAID COURT.] JAMES R. GRAY,
Clerk of the Circuit Court
Eastern District of Missouri."

Which said oath is on file in this office.

And on October 12, 1910, the following proceedings were had to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

570 Comes the Defendant, Railroad Commission of Arkansas, by James M. Hill, William F. Kirby and James H. Harrod, Esqs., its Solicitors and files herein its Motion to modify the order heretofore entered herein permitting the Complainant to charge three cents per mile on passenger traffic and to restrain it from charging more than two cents per mile on intrastate passenger traffic.

Which Motion to Modify the Injunction is as follows:—

In the United States Circuit Court for the Eastern District of Arkansas.

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,

v.

ROBERT P. ALLEN et al., Defendants.

Comes W. A. Falconer, Chairman, Robert P. Allen, and John W. Crockett, Commissioners, constituting the Railroad Commission of the State of Arkansas, Defendants herein, and under leave of Court heretofore granted and move this Honorable Court for a change in the rates in force by the Plaintiff Railroad pending this litigation, — say:

That at the hearing heretofore had this Honorable Court found the freight rates promulgated by the Plaintiff Railroad to be unreasonable, and pursuant to a suggestion made by the Court the traffic officials of various railroads, including the Plaintiff Railroad and the Railroad Commissioners, conferred over the con-
571 struction of a tariff which would yield to Plaintiff Railroad approximately thirty three and one third per cent more revenue than Distance Tariff No. 3, the enforcement of which had been enjoined by Honorable Willis Van Deventer, United States Circuit Judge. That a tariff was agreed upon and put in force on June 1, 1909, known as the "Court Tariff." Under the operation of said tariff Plaintiff Railroad has increased its State freight revenue — per cent, so the Defendants are informed and believe. That at the hearing aforesaid this Honorable Court declined to interfere with the three cent passenger rate which had been put in force by the Plaintiff Railroad, and the Plaintiff Railroad has charged three cents per mile passenger rate from that time until the present time and is still charging the same.

That in sustaining its case, the theory upon which the Plaintiff seeks to prove that freight and passenger rates in force were confiscatory is known as "the revenue theory," and by a vast preponderance of the testimony already taken in the case it is established that whatever value that theory may have elsewhere, so far as applied to the conditions in Arkansas its application as a factor to divide the intrastate and interstate expenses is without relation to the subject, owing to the rate conditions prevailing in the State of Arkansas.

The State rate and interstate rate are such that it is impossible to measure the expenses by the revenue received from the traffic with even a remote approximation to accuracy. That the State has carefully examined the expenses of the Plaintiff Railroad in the State of Arkansas and has localized, so far as possible, all ex-
572 penses between State and interstate traffic, and where it is impossible to localize those expenses, has used the most appropriate factor to approximate the same, taking the factor in each instance

most nearly representing actual conditions. In this way the State has been able to demonstrate that the contentions of the Plaintiff made in ex parte affidavits submitted to Judge Van Deventer, that the State passenger traffic cost fifteen to fifty per cent more than interstate passenger traffic, in proportion to revenue, was wholly without foundation in fact. On the contrary, the facts are that for the six months ended December 31, 1907, when the two cent passenger fare was in force, the Plaintiff Railroad was making a return upon its property devoted to intrastate passenger business (dividing such property according to the Railroad's formula of so dividing it) of 5.21 per cent; and suffering a loss on the interstate passenger business of 3.44 per cent. That during said period the revenue per passenger mile on State traffic was $.01929; and the revenue per passenger mile in interstate traffic was $.01865.

It was further shown that on the total State business Plaintiff Railroad was earning 7.69 per cent return upon its property, (dividing its property according to the railroad's formula of dividing same).

That owing to the increased freight earnings under the Court Tariff over Standard Distance Tariff No. 3, and owing to the increase in the passenger earnings over said period of from two to three cents, the rates, passenger and freight, now being earned
573 by the Plaintiff Railroad are unreasonable, unlawful and burdensome to the people of the State.

Reference is made to a petition filed in these cases in the case of J. J. Carle vs. Chicago, Rock Island & Pacific Railway, and to the case of Wilbur F. Boyle vs. St. Louis & San Francisco Railroad, wherein it is shown that said railroads have been operating for the past fifteen months under a two and one half cents passenger rate, and are now seeking to impose a three cent passenger rate in the State of Arkansas, on all intrastate passengers. That for the reasons set forth in the petition of the Railroad Commission in said cases, said Commission conceives it is its duty to oppose the three cent passenger rate being put in force by said roads, and in view of the fact that said roads are making less return upon their property devoted to State traffic, it would be inequitable and unjust to prevent them charging three cents while the Plaintiff Railroad is charging three cents.

In view of the facts developed in said hearing, as hereinbefore set forth, the Railroad Commission prays this Honorable Court to modify the order heretofore made, permitting the Plaintiff Railroad to charge three cents per mile on passenger traffic and restrain it from charging more than two cents per mile on intrastate passenger traffic.

JOSEPH M. HILL,
WILLIAM F. KIRBY,
JAMES H. HARROD,
Attorneys for the Railroad Commission.

Endorsed on back: Filed Oct. 12, 1910. W. P. Feild, Clerk.

574 And on October 13, 1910, the following proceedings were had, to-wit:

No. 1537.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Comes the Complainant by Moore, Smith & Moore, Esqs, its Solicitors, and files herein its response to the Motion filed herein on October 11, 1910.

Which response of the Complainants is as follows:

No. 1637.

In the United States Circuit Court for the Eastern District of Arkansas. In Chancery.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,
v.
ROBERT P. ALLEN et al., Defendants.

Response by Complainant to Defendants' Motion to Modify the Injunctions in said Cause.

Complainant in response to Defendants' aforesaid application denies that it has earned or is earning a greater amount of revenue from its passenger traffic or a sufficient amount to enable it to realize a net revenue of 6% per annum on said business, or to amount to reasonable or adequate compensation for the service performed by it conducting said traffic.

It further denies that it is earning a net revenue equal to
575 6% per annum or reasonable or adequate compensation on its freight business under the Court Tariff.

It denies that under the operation of said Tariff it has increased its State freight revenue more than — above that allowed by the Arkansas Commission.

For further response Complainant represents that all of the testimony in chief on the part of the Complainant in support of its views as to the relative expense of conducting State and interstate traffic and the manner in which same should be divided between said classes of traffic, upon which the Honorable Willis Van Deventer, Circuit Judge, acted in granting the preliminary injunction in said proceeding, and all the testimony in chief on the part of the Defendants contesting the aforesaid views and methods of apportionment of expense as between State and interstate traffic, and in support of other views and methods entertained by them have also taken, and Complainant is now engaged in taking its testimony in rebuttal and it believes will complete same before the end of the current month.

That the effect of said motion as entertained by the Court would be to arrest the taking of testimony during the hearing thereof and require the Court to hear the present application on ex parte statements, or to investigate and hear argument on the effect of the testimony that has been taken as aforesaid, notwithstanding the fact that the Complainant is in the midst of taking its testimony in rebuttal and expects to take additional testimony that
576 will be relevant and material in support of its contention and in opposition to the contention of the Defendants, and that this cause will be ready for submission in a few weeks and would then have to be re-argued and re-heard by the Court, which Complainant verily believes and alleges would operate as great a hardship upon it and as a great burden upon the Court and Counsel and would not conduce to the ends of justice.

Wherfore, Complainant prays that Defendants' motion to re-open the question upon which the temporary injunction was granted and to modify said injunction on an interlocutory hearing at this stage of the case and on a part only of the testimony material to its determination be denied.

MOORE, SMITH & MOORE,
Attorneys for Respondent.

Endorsed on back: Filed Oct. 13, 1910. W. P. Feild, Clerk.

577 UNITED STATES OF AMERICA,
Western Division of the
Eastern District of Arkansas:

Be it remembered, that at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 17th day of October, Anno Domini, One Thousand Nine Hundred and Ten, at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Treiber, Judge presiding and holding said Court, the following proceedings were had, to-wit: January 2nd, 1911.

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Comes the Complainant by John M. Moore, Esq., its Solicitor, and come the Defendants by James H. Harrod, Esq., their Solicitor, and this cause having been set down for final hearing on the date, and it appearing to the Court that Joseph M. Hill, senior Counsel for Defendants, is unavoidably detained and can not reach the hearing, it is ordered by the Court, by agreement of parties, that the hearing hereof be continued until tomorrow morning.

578 And on January 3rd, 1911, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, JOHN W. CROCKETT, and JOHN E. HAMPTON, Railroad Commissioners of the State of Arkansas; Henry Leigh and George L. McLean.

Comes the Complainant, by Moore, Smith & Moore, Esqs., and come the Defendants, by Joseph M. Hill and James H. Harrod, Esqs., their Solicitors, and this cause now coming on for final hearing upon the bill, exhibits thereto, answer, replication and all pleadings and proofs in the case, together with all depositions and exhibits thereto taken before the Master or otherwise, thereupon the Court proceeds to hear the evidence and argument of Counsel as well on the part of the Defendants as of the Complainant, and the hearing hereof not being concluded, the same is continued until tomorrow morning at half past nine o'clock.

And on January 4th, 1911, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, JOHN W. CROCKETT and JOHN E. HAMPTON, Railroad Commissioners of the State of Arkansas, et al.

Comes the Complainant, by Moore, Smith & Moore, Esqs., its Solicitors, and come the Defendants by Joseph M. Hill and James H. Harrod, Esqs., their Solicitors, and the hearing hereof not
579 being concluded on yesterday the same is now resumed, and the hearing hereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

And on January 5th, 1911, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, JOHN W. CROCKETT and JOHN E. HAMPTON, Railroad Commissioners of the State of Arkansas, et al.

Comes the Complainant, by Moore, Smith & Moore, Esqs., its Solicitors, and come the Defendants by Joseph M. Hill and James H. Harrod, Esqs., their Solicitors, and the hearing hereof not being concluded on yesterday the same is now resumed; and the hearing hereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

And on January 6th, 1911, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, JOHN W. CROCKETT and JOHN E. HAMPTON, Railroad Commissioners of the State of Arkansas.

Comes the Complainant, by Moore, Smith & Moore, Esqs., its Solicitors, and come the Defendants, by Joseph M. Hill and
580 James H. Harrod, Esqs., their Solicitors, and the hearing hereof not being concluded on yesterday, the same is now resumed; and the hearing hereof not being concluded, the same is continued until tomorrow morning at half past nine o'clock.

And on the same day the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN et al.

Comes Charles M. Rice, Esq., Special Examiner herein, and asked the Court for an allowance for his services and expenses in these causes and come the parties by their respective Solicitors and the Court being well and sufficiently advised in the premises,

It is considered, ordered and adjudged by the Court that Charles M. Rice be and he is hereby allowed the sum of Five Hundred Dollars, ($500.00) as his compensation for his services as Special Examiner and the further sum of Forty-Three Dollars and Twenty-five Cents ($43.25) for expenses incurred by him in the performance of his duties as such Special Examiner, and that the Complainants, St. Louis, Southwestern Railway Company and St. Louis, Iron Mountain & Southern Railway Company pay one half of said sum ($271.63) and that the Defendants Robert P. Allen et al., &c., pay one half thereof, ($271.62), which said sum shall be taxed by the Clerk of this Court as costs in these causes, when finally determined.

581 And on January 7, 1911, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, JOHN W. CROCKETT and JOHN E. HAMPTON, Railroad Commissioners of the State of Arkansas, et al.

Comes the Complainant, by Moore, Smith & Moore, its Solicitors, and come the Defendants, by Joseph M. Hill and James H. Harrod,

Esqs., their Solicitors, and the hearing hereof not being concluded on yesterday, the same is now resumed; and the hearing hereof not being concluded, the same is continued until Monday afternoon at half past one o'clock.

And on January 9, 1911, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, JOHN W. CROCKETT and JOHN E. HAMPTON, Railroad Commissioners of the State of Arkansas, et al.

Comes the Complainant, by Moore, Smith & Moore, Esqs., its Solicitors, and come the Defendants, by Joseph M. Hill and James H. Harrod, Esqs., their Solicitors, and the hearing hereof not being concluded on Saturday, the same is now resumed; and the hearing hereof not being concluded the same is continued until Mon-
582 day morning, January 16th, 1911, at half past nine o'clock.

And on January 9th, 1911, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, JOHN W. CROCKETT and JOHN E. HAMPTON, Railroad Commissioners of the State of Arkansas, et al.

Comes the Complainant, by Moore, Smith & Moore, Esqs., its Solicitors, and come the Defendants, by Joseph M. Hill and James H. Harrod, their Solicitors, and it being made to appear to the Court that the term of office of John W. Crockett and John E. Hampton, Railroad Commissioners of the State of Arkansas, Defendants herein, has expired, and that under the laws of the State of Arkansas, W. F. McKnight and George W. Bellamy have been elected to succeed said John W. Crockett and John E. Hampton, as Railroad Commissioners of the State of Arkansas, and have qualified and are now acting as such.

It is now ordered by the Court, by consent of the parties hereto that the names of W. F. McKnight and George W. Bellamy be substituted for that of John W. Crockett and John E. Hampton, and that this cause abate as to said Crockett and Hampton, and progress in the name of W. F. McKnight and George W. Bellamy, substituted as Defendants herein.

And on January 16, 1911, the following proceedings were had, to-wit:

583 No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, W. F. MCKNIGHT, and GEORGE W. BELLAMY, Railroad Commissioners of the State of Arkansas, et al.

Comes the Complainant, by Moore, Smith & Moore, Esqs., its Solicitors, and come the Defendants, by Joseph M. Hill and James H. Harrod, Esqs., their Solicitors, and the hearing hereof not being concluded on January 9th, 1911, is now resumed; and the hearing hereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

And on January 17th, 1911, the following proceedings were had, to-wit:

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, W. F. MCKNIGHT, and GEORGE W. BELLAMY, Railroad Commissioners of the State of Arkansas, et al.

Comes the Complainant, by Moore, Smith & Moore, Esqs., its Solicitors and come the Defendants by Joseph M. Hill and James H. Harrod, Esqs., their Solicitors, and the hearing hereof not being concluded on yesterday the same is now resumed; and the hearing hereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

And on January 18th, 1911, the following proceedings were had, to-wit:—

584 No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, W. F. MCKNIGHT, and GEORGE W. BELLAMY, Railroad Commissioners of the State of Arkansas, et al.

Comes the Complainant, by Moore, Smith & Moore, Esqs., its Solicitors, and come the Defendants, by Joseph M. Hill and James H. Harrod, Esqs., its Solicitors, and the hearing hereof not being concluded on yesterday, the same is now resumed; and the hearing hereof not being concluded, the same is continued until tomorrow morning at half past nine o'clock.

And on January 19th, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, W. F. MCKNIGHT, and GEORGE W. BELLAMY, Railroad Commissioners of the State of Arkansas, et al.

Comes the Complainant, by Moore, Smith & Moore, Esqs., its Solicitors, and come the Defendants, by Joseph M. Hill and James H. Harrod, Esqs., their Solicitors, and the hearing hereof not being concluded on yesterday, the same is now resumed; and the hearing hereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

And on January 20th, 1911, the following proceedings were had, to-wit:—

585 No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, W. F. MCKNIGHT, and GEORGE W. BELLAMY, Railroad Commissioners of the State of Arkansas, et al.

Comes the Complainant, by Moore, Smith & Moore, Eqs., its Solicitors and come the Defendants, by Joseph M. Hill and James H. Harrod, Esqs., their Solicitors, and the hearing hereof not being concluded on yesterday, the same is now resumed; and the hearing hereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

And on January 21, 1911, the following proceedings were had, to-wit:—

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, W. F. MCKNIGHT, and GEORGE W. BELLAMY, Railroad Commissioners of the State of Arkansas, et al.

Comes the Complainant, by Moore, Smith & Moore, Esqs., its Solicitors, and come the Defendants, by Joseph M. Hill and James H. Harrod, Esqs., their Solicitors; and the hearing hereof not being concluded on yesterday, the same is now resumed; and the Court having heard the evidence and argument of Counsel and not now being well and sufficiently advised as to what judgment to render herein takes time to consider of its judgment.

586 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it remembered, that at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 4th day of April, Anno Domini, One Thousand Nine Hundred and Eleven, at the United States Court Room in the City of Little Rock, Arkansas, the Honorable Jacob Treiber, Judge presiding and holding said Court, the following proceedings were had, to-wit: On May 11th, 1911:

587 No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
v.
ROBERT P. ALLEN, GEORGE W. BELLAMY, and WILLIAM F. McKNIGHT, Railroad Commissioners of the State of Arkansas, and Henry Leigh and George McLean.

Now, on this day comes the Complainant, by its Solicitors, Moore, Smith & Moore, Esqs., and also come the Defendants, by their Solicitors, Joseph M. Hill and James H. Harrod, Esqs., and thereupon said cause having been argued and submitted upon the evidence and stipulations on file and of record in said cause, and having been taken under advisement at a former term of this Court, and the Court being well and sufficiently advised in the premises,

It is accordingly ordered and decreed that the Defendants Robert P. Allen, George W. Bellamy and William F. McKnight, as Railroad Commissioners of the State of Arkansas, and Henry Leigh and George McLean, and each of them, their agents, employees and successors as well as all other persons patrons of complainant, either in the shipment of freight, or as passengers between stations on Complainant's road in the State of Arkansas, are hereby perpetually enjoined from enforcing or attempting directly or indirectly by any suit or in any manner whatsoever to enforce against the Complainant, its officers, agents, employees or servants, any of the provisions of Standard Freight Distance Tariff No. 3, and amendments thereto adopted prior to the institution of this section, prescribing the rate or rates for the transportation of classes and commodities or any provision of said tariff whereby any of said
588 rates shall be continued in force, or from enforcing or attempting directly or indirectly, by suit or in any other manner whatsoever, to enforce against Complainant, its officers, agents, or servants, any of the provisions of an Act of the General Assembly of the State of Arkansas, entitled, "An Act to Amend Section 6611 of Kirby's Digest of the Statutes of Arkansas, by Fixing Passenger Rates in this State and For Other Purposes," approved February 9th, 1907, or to enforce the provisions of any other Act or Acts of the Legislature of said State providing penalties for non-compliance by Complainant with the provisions and requirements of Standard Freight Distance Tariff No. 3 and amendments thereto as aforesaid,

or the aforesaid Act of the Legislature of the State of Arkansas, fixing passenger rates in said State.

It is further ordered that the costs incurred by Complainant and Defendants respectively, in procuring the attendance of witnesses before the Master and the payment of the fees of stenographers in the recording of said testimony be borne by the Complainant and the Defendants, Robert P. Allen, George W. Bellamy and William F. McKnight and that neither party recover from the other therefor; that all remaining costs including Master's fees, the Complainant pay one fourth and the Defendants, Robert P. Allen, George W. Bellamy and William F. McKnight, Railroad Commissioners aforesaid pay one half, the other one fourth to be paid by Complainants in case No. 1636, the payment of said costs to be recovered by execution to be issued by the Clerk of this Court upon application of either party in interest.

589 It is further ordered that the bond for injunction filed by the Complainant here be released and the sureties thereon discharged from liability.

And the Court hereby reserves and retains unto itself jurisdiction of the subject matter of this suit and of all parts hereto to the end that such other and further orders and decrees may be made herein as may become necessary herein by reason of any changed condition as to the facts, equities or rights that may hereafter take place or arise.

(Signed) JACOB TREIBER, *Judge.*

The following testimony was adduced at the hearing of the cause:

590 The Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
vs.
ROBT. P. ALLEN et al.
and
THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
vs.
ROBT. P. ALLEN et al.

Hearing Before the Master.

ST. LOUIS, MO., *Nov.* 10, 1909.

The above entitled causes coming on for hearing before the Master duly appointed by the Court, the parties appeared by their respective counsel at the Federal Building, in the City of St. Louis, Missouri, on the 10th day of November, A. D. 1909.

Appearances:

Hon. P. C. Dooley, Special Master.
Mr. J. M. Moore appeared in behalf of the Complainants.
Messrs. J. M. Hill and W. F. Kirby appeared in behalf of the Defendants.

The following proceedings were had:

It is stipulated by and between counsel that all the testimony taken before the Master, under the reference, will be used, so far as applicable, in both cases above named, and that all exceptions as to competency and relevancy are reserved to the hearing before the court.

591 FRED P. JOHNSON, a witness called on behalf of the complainants, being first duly sworn, testified as follows:

Direct examination.

By Mr. MOORE:

Q. Mr. Johnson, will you state your name in full; your residence and your occupation?

A. Fred P. Johnson; St. Louis, Mo. Chief Clerk in the Auditor's office of the Iron Mountain Railroad.

Q. Are you an accountant, is that your business?

A. That is my experience.

Q. State what your connection is with the St. Louis, Iron Mountain & Southern Railroad Company at this time, and how long have you maintained that relation?

A. I began work with the Iron Mountain Railway as a messenger boy, twenty-one years ago. All of my service has been in the Auditor's office and in such departments as deal entirely with the accounts of the Railroad. For seven years I have been in charge of a department in connection with the special operating statistics.

Q. How long have you been working in the accounting department of the Railroad Company.

A. For the twenty-one years.

Q. Otherwise than as messenger; that is, in direct con-
592 nection with the accounts that are kept in that department?

A. For perhaps nineteen years, nineteen of the twenty-one.

Q. Have you a map of the Missouri Pacific Railway system, including the St. Louis, Iron Mountain & Southern Railroad?

A. Yes sir.

Q. Will you file that map as Exhibit 1, of your testimony?

A. Yes sir.

The paper referred to is offered in evidence, as Exhibit 1, to Mr. Johnson's testimony; said exhibit being — the words and figures as follows, to wit:

For Exhibit One, see Volume 8, page 5236.

593 Q. Please state in what manner the line of the St. Louis, Iron Mountain & Southern Railroad is designated on the map you have filed.

A. The map shows all of the lines of the Missouri Pacific-Iron Mountain system and connections in Texas. The Iron Mountain Railway is shown in blue. In the states of Missouri, Arkansas, Louisiana and Oklahoma, the Iron Mountain is designated by the blue line.

Q. What are the red lines?

A. The red line indicates the Missouri Pacific Railway, and (I presume it is pink), indicates the St. Louis Southwestern.

Q. Have you prepared a statement showing the track mileage of the St. Louis, Iron Mountain & Southern Railway?

A. Yes sir. I have a statement here that shows the mileage of the St. Louis, Iron Mountain & Southern Railway by branches; also divided between the miles owned and the miles leased, and the statement shows the proportion of the mileage of each of the branches located in the state of Arkansas.

Q. Please state the dates at which all of the mileage shown in the map, in the state of Arkansas, was acquired by the Railway Company.

A. The statement itself is made up from our records as of June 30, 1908; but I will say there has been no change in the mileage between that date and the present time.

Q. Please state if all, and if not all, what parts of the line as shown on the map, were in operation during the year 1907.

594 A. All of the mileage indicated on the map was in operation during the latter part of 1907; if I understand the question right.

The paper showing track mileage is offered in evidence, as Exhibit 2, to Mr. Johnson's testimony; said exhibit being in the words and figures as follows, to wit:

For Exhibit two, see Volume 8, page 5237.

595 Q. Have you a statement showing the earnings and expenses of the operation of the St. Louis, Iron Mountain & Southern Railway, in the state of Arkansas, for the six months ending December 31, 1907?

A. Yes sir.

Q. Who prepared that statement?

A. The statement itself was prepared under my direction. The details were worked out by several departments.

Q. Does the statement correctly reflect what is shown by the books of the Railway Company, as to earnings and expenses?

A. Yes sir.

Q. And is that the record that is used by the Company in its business, in its reports and all of its affairs?

A. Yes sir.

Q. Does that statement show earnings and expenses of transportation, in freight and passengers, respectively?

A. Yes sir.

Q. Does it separate the state from the interstate earnings?

A. Yes sir; in so far as freight and passenger are concerned.

Q. Does it show the basis upon which the revenue is divided between states, and between interstate and intrastate business?

A. Yes sir.

Q. Does it show the basis used in dividing the expenses
596 of operation, taxes and rentals, between states, and between freight and passenger business?

A. Yes sir.

Q. Does the statement contain a comparison of expenses of conducting freight and passenger transportation, between state and interstate business, and the basis and formula used for that purpose?

A. Yes.

Q. Will you introduce the statement as Exhibit 3?

A. Yes sir.

The paper referred to is offered in evidence, as Exhibit 3, to Mr. Johnson's testimony; said exhibit being in the words and figures as follows, to-wit:

For Exhibit three, see Volume 8, page 5239.

597 Q. Mr. Johnson, that statement consists of an account of earnings and expenses and is then followed by various statements relating to the matters in regard to which I have asked you in connection with this. I wish you now to begin with the accounts, and in your own language, without any further questions from me, to explain the accounts and the statements attached thereto, in the order in which they appear on the statement.

A. The exhibit itself consists of a statement of earnings and expenses of the Iron Mountain Company in the state of Arkansas, for six months ending December 31, 1907.

Paragraph A, shows the gross revenue of the Iron Mountain Company, in the state, divided between intrastate freight and interstate freight; miscellaneous freight; intra-state passenger and interstate passenger, and all miscellaneous passengers. The statement also shows the percentage of each class of freight and passenger revenue, to the total of each class——

Q. You mean the total of each account?

A. Yes, to the total of each account, and the percentage of each class of revenue to the grand total of revenue.

Q. Of both?

A. Of both freight and passenger. Now, paragraph A, is supported by statement #1, that shows the revenue under the various nineteen counts authorized by the Interstate Commerce Commission.

598 The methods used in apportioning the revenue to the State of Arkansas, and of dividing the revenue between intrastate and interstate, are shown in Statement #2, attached to that exhibit,—attached to this exhibit is statement #3, showing the gross revenue under the nineteen revenue accounts for the entire line, and also the revenue under each of these accounts for the state of Arkansas.

Statement No. 3 also shows various statistics relative to train, car and engine mileage, and the volume of business handled both upon the entire line and in the State of Arkansas; and the percentage of revenue from the business handled in the State to the revenue of the

business of the entire line. The purpose of that statement is to show that the proportions of the revenue accruing in the state of Arkansas are in line with the business handled.

Paragraph B, of the exhibit, shows the total operating expenses, taxes and rentals, of the Iron Mountain in the state of Arkansas, divided between freight and passenger, and separated under the general expense items, such as maintenance of way and structures; maintenance of equipment, and general expenses. The basis used in apportioning the expenses to the state of Arkansas and of dividing them between the freight and the passenger service, are shown in Exhibit #5; or rather, in statement #5, let me make that. Statement #4, attached to the exhibit, shows the operating expenses under each individual expense account, both for the entire line and for the state of Arkansas, and the proportion of the state of Arkansas to the entire line.

599 These percentages were worked out for the purpose of compairing them with the revenue and the business handled, to indicate that the expenses had been normal.

Paragraph C, of this exhibit, shows the assessment of the State Board of Equalization for the purpose of taxation, showing the amount assessed for the purpose of taxation, and this amount is divided between the freight and passenger service, and also divided to show a proportion of the total assessment for the six months' period, and underneath that we show the interest upon these amounts, both at six percent and seven percent, and at eight percent.

Paragraph D, is a——

Q. The amount of the assessment as set out in paragraph C, is $20,156,022.00. Please state how you arrived at that amount and for what purpose.

A. The item of $20,156,022.00 is the assessment made by the Arkansas State Board of Equalization.

Q. Upon what basis of valuation?

A. We have always understood that that was on the basis of fifty percent of what they considered the actual value; so in determining the value, for the purpose of this statement, we have multiplied the twenty million dollars by two; to get valuation of the property, and six percent interest is figured upon one-half of that amount to determine the amount of interest for six months.

Q. You take the figures $20,156,022.00 as representing one-half of the total valuation, as indicated by the assessment, appli-

600 cable to the six months, the half year?

A. Yes sir. Paragraph D, is merely a recapitulation of the total business in the state of Arkansas, as shown in the preceding paragraphs, and indicates that after deducting taxes and rentals, there is a balance of $1,464,207.80 in freight and $35,567.55 in passenger business, and that that is equivalent to a return of 9.9% upon the assessed value shown in paragraph C, in freight service, and .66% in passenger service, or a total of 7.44% return upon the assessed value of the property. That is both state and interstate combined.

Paragraph E, shows the intrastate gross freight and passenger revenue and the proportion of the total operating expenses in the state

of Arkansas, ascertained upon a revenue basis, assigning to the intrastate services 13.08% of the entire freight expense, which was the percentage of intrastate freight revenue to the total freight revenue, and assigning 47.03% of the entire passenger expenses to the intrastate passenger service, and then deducting a proportion of the taxes and rentals, ascertained in the same way, leaving in the freight service $191,334.05; in the passenger service $16,690.16.

Now from the amounts thus left we have deducted, in paragraph F, various amounts to cover extra cost of handling state freight.

Q. Mr. Johnson, please state why the results are stated as they appear in paragraph F, of your exhibit.

601 A. The various percents of extra cost were figured at the request of our legal department. We have figured the extra cost at various percentages, showing the results here.

Paragraph G, shows the percentage of the assessed valuation of the property assignable to the intrastate business on a basis of the revenue percentages. This paragraph shows, that making no allowance for the extra cost of handling intrastate traffic, the percent of the return upon the values shown would be 9.89% in freight, and .66% in passenger; or, 4.66% on the total business. Allowing fifty percent for the extra cost of handling intrastate traffic, and making no allowance for the extra cost of the passenger, the percentage of the return would be, in freight .93%; passenger .66% or a total of .78%.

Now, the statements accompanying this exhibit are merely the detailed figures in support of the exhibit itself.

Q. What are statements numbered 6 and 7?

A. Statement number 6 shows the formula or method used in arriving at the extra cost in handling state business under the various percentages used. Statement number 7 shows the same information for the passenger service. I want to say in connection with the division of these earnings, as between intrastate and interstate, they are handled under or by a special department in charge of Mr. Roth, of our office and he is, perhaps, in a better position to explain them in detail than anyone else would be.

602 Q. I notice, Mr. Johnson, that in the two paragraphs of the note at the end of statement number 2, you say no attempt has been made to divide miscellaneous revenue between state and interstate. Please explain why that was not done.

A. Well, in the first place, we have no reasonable basis for making such divisions, and we don't believe that miscellaneous business has any bearing on this case; at least, we did not in making up these figures. The miscellaneous revenue includes the revenue from mail and express business. The rates upon mail and express were not under the control of the railroad, nor are they part of this litigation, and for that reason no attempt has been made to assign any part of the miscellaneous earnings, either of freight or passenger, to the intrastate and interstate freight or passenger service. In place of that we have assigned to the miscellaneous earnings a certain proportion of the operating expenses in each class of service, so as to provide for

the expense of that business, and then deal entirely with the freight and passenger traffic.

Q. You have eliminated the miscellaneous expenses as well as the miscellaneous earnings then, have you?

A. Yes sir.

Q. And have excluded both classes from your statements?

A. Yes sir.

Q. Do the rates prescribed by the Railroad Commission of the state of Arkansas cover express transportation?

A. Freight railroad rates do not.

That statement, exhibit #2, if you please, takes up each
603 one of the nineteen revenue accounts and it shows how we divide the revenue between the state of Arkansas and between other states, and how the various miscellaneous revenue accounts are divided as between freight and passenger service, treating each one of them separately.

Q. Is there any further explanation you desire to make in connection with exhibit 3?

A. No sir.

Q. Have you prepared a statement of the earnings and expenses for the six months ending December 31, 1907, as the same were ascertained and divided by Judge Vandevanter at the hearing held by him on the application for the injunction in this case?

A. Yes sir.

Q. Will you file that statement as Exhibit 4?

The paper referred to is offered in evidence, as Exhibit 4, to Mr. Johnson's testimony; said exhibit being in the words and figures as follows, to wit:

For Exhibit four, see Volume 8, page 5620.

604 Q. In what way did Judge Vandevanter apportion the values as shown by the assessment made by the state of Arkansas, as between intrastate and interstate?

A. Shall I explain that or shall I read it? I just embodied his own words in this.

Q. You can just state that.

A. Judge Vandevanter's basis of assigning the value of the property between each class of service, is shown on the first page of the statement #1, which accompanies this exhibit.

Q. That is on the basis of the cost of operation?

A. The amount of the assessment would be divided between the various classes of the business on the basis of the cost to operate each class, and the division upon that basis; or rather, the percentages of that division, are shown on the third page of this statement #1.

Q. Have you prepared a statement containing statistics which have a bearing on the relation to the business handled during the six months that are covered by Exhibit 3?

A. Yes.

Q. Will you file that as exhibit number 5?

A. Yes sir.

The paper referred to is offered in evidence as Exhibit 5, to Mr. Johnson's testimony; said exhibit being in the words and figures as follows, to wit:

For Exhibit five, see Volume 8, page 5266.

605 A. This statement simply shows the number of tons, ton miles and the revenue on each class of business, and the various items of train and car mileage, for the period of six months ending December 31, 1907.

Q. Have you also prepared a statement showing comparative averages, based upon statistics published by the Interstate Commerce Commission for 1907, with the average based on the business handled by the Railroad Company during the period referred to in Exhibit 3?

A. Yes sir.

Q. Will you file that as Exhibit number 6?

A. Yes sir.

The paper referred to is offered in evidence, as Exhibit 6, to Mr. Johnson's testimony; said exhibit being in the words and figures as follows, to wit:

For Exhibit six, see Volume 8, page 5269.

606 A. That statement shows the percentage of each class of revenue to the total revenue, and the percentage of each class of operating expenses to the total operating expenses; and miscellaneous passenger and freight statistics covering the railroad business of the United States, and the business of all lines in what is called by the Interstate Commerce Commission, "Group number 8," with the same statistics for the St. Louis, Iron Mountain & Southern Railway Company, and for that portion of the Iron Mountain Railway located in the state of Arkansas. The purpose of compiling it was to show the comparison between those various groups. The statistics covering the United States and Group 8, were taken from the 20th annual report of the Interstate Commerce Commission.

Q. What states comprise Group 8?

A. Missouri, south of the Missouri River; Arkansas, Louisiana, Texas, Oklahoma and Kansas, I believe.

607 HUBERT ROTH, a witness called on behalf of the complainants, being first duly sworn, testified as follows:

Direct examination.

By Mr. MOORE:

Q. Mr. Roth, state your name in full, please; your residence and your occupation.

A. Hubert Roth; Webster Grove, Mo. I am assistant chief clerk, in charge of special statistics.

Q. Do you mean of the St. Louis, Iron Mountain Railroad?

A. Yes, sir, St. Louis & Iron Mountain Railway.

Q. How long have you been engaged in that kind of work?

A. I have worked for the Iron Mountain about ten years.

Q. And have you had experience in compiling statistics and in keeping accounts?

A. For all of that time, yes, sir.

Q. Did you prepare the statement number 1, attached to Exhibit #3, introduced by Mr. Johnson in this case, showing the interstate gross revenue of the St. Louis, Iron Mountain, for the six months ending December 31, 1907?

A. Yes, sir.

Q. Now, what source was that information obtained from that is embodied in that statement?

A. The intrastate freight was compiled separately from our journals, which are a record of the way-bills. The interstate earnings are worked up month by month, by dividing the total earn-

608 ings of the Iron Mountain Railway by the percentages which the Arkansas track miles; or rather, the haul through Arkansas bears, to the whole of the haul of that particular freight over the Iron Mountain. Then we take the total earnings as shown by the books, as accruing in the state of Arkansas, and deduct from that the special intrastate statistics we have worked up, which would give us the interstate end of the earnings.

Q. Now, I understand, Mr. Roth, you took the statement of the interstate business from the books of the Company. Is that correct?

A. The total business, yes; which includes both interstate and intrastate.

Q. You obtained that from the books of the Company?

A. Yes sir.

Q. And this statement contains an account of the intrastate, or state business?

A. Yes.

Q. Did you work that up? That is what I want to know.

A. We worked that up, yes, sir.

Q. It was done under your supervision and direction?

A. Yes sir.

Q. And did you have personal cognizance of it?

A. Yes sir.

Q. And you know it is correctly taken from the books and data contained in the records.

A. Yes sir.

609 FRED P. JOHNSON recalled:

Cross-examination.

By Mr. J. M. HILL:

Q. You have not included in your exhibit 3, your assessment of the State Board of Railroad Commissioners, for the year 1907 by divisions, have you?

A. No sir.

Q. Have you made up such a statement which you can furnish to the Master?

A. Yes sir, we have such a record.

Q. Look at this and see if that is it?
A. (After examining paper) Yes, sir.
Q. This is a correct statement, is it Mr. Johnson?
A. It is, so far as I know. It is taken from the reports of the Board of Equalization, yes, sir.
Q. Have you some other copies of this? If convenient I would like to make this your cross-examination exhibit No. 7.
A. I have not any copies, but I can have them prepared.

The paper referred to is offered in evidence, as Exhibit 7 to Mr. Johnson's testimony.
Said exhibit is in the words and figures following to-wit:
For Exhibit seven, see Volume 8, page 5271.

610 Q. Does exhibit 7 contain all of the line of road belonging in this litigation?
A. It contains all of the lines in this suit. I don't know how you would distinguish the cases. I understand the subsidiary lines of the Iron Mountain have separate suits.
Mr. MOORE: The lines in this suit.

A. This embraces all of the mileage of the St. Louis, Iron Mountain & Southern Railway.

Mr. HILL:

Q. Those in this particular suit?
A. Yes sir.
Q. You have some other suit, the Arkansas Central, and possibly some other subsidiary lines of your Company?
A. I don't know what condition the suits are in, or whether they are brought or not. I know each of those roads received a temporary injunction. I don't know just what the status of the case is.
Q. As a matter of fact, there are two or three of those short lines which obtained temporary injunctions, and those suits have been passed, subject to this suit. What is in this assessment, exhibit 7. is the property in this particular law suit we are now trying?
A. Yes sir.
Q. And this includes all of the property that is in this litigation?
A. Yes sir.
Q. Your exhibit 1, the map, shows all of this property and considerably more: am I correct, Mr. Johnson?
A. The map shows all of this mileage, yes, sir.
Q. And shows much more than this particular mileage, doesn't it, being a map of the lines in Arkansas, it does not rep-
611 resented solely the lines in this litigation.
A. The map itself shows not only the Iron Mountain but it shows the Cotton Belt and it shows the mileage of these various subsidiary lines; but they are not in blue.
Q. Aren't they in blue?
A. No, sir, the subsidiary lines are in black.
Q. So far as you are advised, Mr. Johnson, the blue line on this map represents the lines in this litigation.
A. Yes sir.

Q. And the black lines do not?
A. No, sir, they represent the subsidiary lines.
Q. What is the Iron Mountain Railway of Memphis?
A. It is a switching line 1.07 miles long, located in the City of Memphis; and in our statement of track mileage we show that as a separate item, in our exhibit 2.
Q. That is not included in your exhibit 7?
A. I believe not. The mileage of that line in Memphis, of course would not be in the Arkansas assessment.
Q. Are the earnings and expenses of that piece of road charged to Arkansas in these statements which you have just introduced in evidence?
A. Yes sir.
Q. You have included here as a leased line, the Van Buren Line: what is that, Mr. Johnson?
A. It is the Frisco trackage at Van Buren, across the Arkansas River.
Q. Does your road use that track at Van Buren and use the Frisco Bridge?
A. Yes sir, we have trackage rights there.
Q. Your road has a contract of some sort, I believe, with the Frisco Road, by which it may use the Frisco bridge and a
612 small part of the Frisco track, from the junction with your line? Isn't that a fact?
A. Yes sir.
Q. That is what is intended by this?
A. Yes sir.
Q. That is, your road over that bridge and a small portion of the Frisco track?
A. Yes sir.
Q. That is not used by any of your freight trains, is it Mr. Johnson?
A. I do not believe I can answer that positively. I do not believe it is. I think it is used exclusively for passenger business but I may be mistaken.
Q. You are right.
—. It is only used for a part of the passenger trains, isn't it?
A. In what way?
Q. You do not run all of your passenger trains over that route, do you?
A. Oh no sir.
Q. You run two a day don't you?
A. I do not know how many.
Q. I wish you would get that information and tell me of some operating man who can definitely answer that.

Mr. MOORE: Mr. Johnson will get the information and answer the question.

Mr. HILL:

Q. Mr. Johnson, do you know whether your contract with that bridge has expired, or is about to expire?

A. I do not know anything about that Judge Hill. I do
613 not know anything about the contracts—that is, the length of the contract.

Q. You do not know what the contract is?

A. No sir.

Q. You merely know of the existence of such a contract?

A. I know there is such a contract.

Mr. HILL: That may become material, Mr. Moore. I cannot say now. Are you going to have some operating man on the stand shortly?

Mr. MOORE: Yes, we will get you whatever information you desire.

Mr. HILL:

Q. As a matter of fact, Mr. Johnson, I believe you run two trains a day over that track, and the balance of your traffic runs over the Cherokee Junction. Isn't that a fact?

A. I know our trains do run over Cherokee Junction, but as to the number of them each way I cannot say.

Q. This item represents whatever use is made of that mile and a half of track of the Frisco Road, including the bridge, and does not represent any of your own ownership?

A. 1.39.

Q. That represents merely your interest in that track?

A. Our rights over that Frisco track.

Mr. HILL:

Q. Mr. Moore I expect you had better show us that contract.

Mr. MOORE: Very well.

Mr. HILL:

Q. I do not believe you have in any of these exhibits the Arkansas Central Railway.

A. No sir.

Q. That is a separate corporation?

614 A. Yes sir.

Q. Owned by the Iron Mountain Railway, isn't it?

A. I cannot answer that.

Q. That road makes returns to your office doesn't it?

A. It makes returns to them yes. These accounts are handled by its own Auditor.

Q. And returns made to the Auditor of the Iron Mountain?

A. Yes sir, it is a matter of record in our office.

Q. Like the Arkansas Midland. Is that in the same condition?

A. The accounts of the Arkansas Midland are kept in our office.

Q. What do you do with the revenue of such lines as the Arkansas Central and the Arkansas Midland—or of any deficit which there might be? Is that paid by the Iron Mountain, and is the revenue received by it if there is any surplus?

A. I do not know what becomes of the revenue eventually. So far as the accounts of the Company are concerned it is never merged

with the Iron Mountain—if that is what you mean. In keeping the accounts of the Arkansas Midland we keep it just as it is were an entirely separate corporation. As to who makes up the deficit I cannot answer.

Q. Or who receives the surplus?

A. Or who receives the final surplus, if there is any.

Q. Do you know, as a matter of fact, Mr. Johnson (you may know as a matter of personal information) that those two roads are owned by the St. Louis, Iron Mountain & Southern Railway?

615 A. The Arkansas Midland is controlled by The St. Louis, Iron Mountain & Southern Railway but I do not know who owns the stock.

Q. Is any part of the expenses of those roads borne by the Iron Mountain?

A. No sir.

Q. Is any part of the general expenses of the St. Louis, Iron Mountain & Southern distributed to any of these subsidiary lines?

A. Of the general office expenses, you mean?

Q. Yes.

A. No sir.

Q. Or any of the other expenses of The St. Louis, Iron Mountain & Southern Railway?

A. Of all operating expenses they stand their proportion.

Q. They stand their proportion of the operating expenses?

A. Yes sir.

Q. I wish you would explain that Mr. Johnson. I do not quite understand that.

A. You are referring to any of these roads, aren't you?

Q. Yes. Take the Arkansas Central or the Arkansas Midland as an illustration, or any of these subsidiary lines.

A. Take the Arkansas & Louisiana as an illustration. That is under the supervision of the Superintendent of The St. Louis, Iron Mountain & Southern Railway and he is also Superintendent

616 of the Arkansas & Louisiana. A portion of his expenses and salary is assigned to the Arkansas & Louisiana road. Likewise a proportion of the salary of any other officer who might be connected with the Arkansas & Louisiana road in an operating capacity.

Now we have never charged against that road any part of the general office expenses. That is, any expense such as might be charged to the general expense account. But so far as operating expenses are concerned they stand their own expenses.

Q. How about the legal expenses?

A. The Arkansas & Louisiana road pays all the expenses of the legal department in Arkansas in connection with their own line.

Q. They are not charged with any part—well, that would mean that they bear only their own legal expenses?

A. That is all.

Q. Do they bear any relation to the St. Louis, Iron Mountain & Southern other than to share the general expenses—I mean operating expenses?

A. I do not know of any other relation. If I understand your question, you want to know whether the general office expenses of The St. Louis, Iron Mountain & Southern is chargeable, any part of it, to the Arkansas & Louisiana Railway?

Q. Yes, or any other expense. The first question was the general office expense, and now I ask you more broadly.

A. No part of the general office expense is charged to that line. I cannot conceive of any other expense that would be covered as a general expense.

Q. Does that become a factor in the statement you have
617 just introduced?

A. I cannot see that such a policy would have any bearing on the figures at all.

Q. Your expense figures which you have introduced have been those expenses that were left to The St. Louis, Iron Mountain & Southern Railway after taking out the expenses which have been distributed to these subsidiary lines?

A. Yes sir.

Q. That is the way you make up those expenses?

A. Yes sir.

Q. In other words, these expenses you have exhibited here are the net (if we can use such a term) after taking out what should be distributed to these subsidiary lines?

A. Yes sir, what shoud be assigned to these subsidiary companies. In other words, the expenses of these subsidiary companies never enter into the expense of the St. Louis, Iron Mountain & Southern Railway.

Q. But the expense of The St. Louis, Iron Mountain & Southern Railway does enter into the expense of these subsidiary railroads?

A. I do not see how. What I mean by that is, the train service of the Arkansas Midland, or the Arkansas & Louisiana, or any of these lines, is never charged to The St. Louis, Iron Mountain & Southern Railway. It is charged direct to the Arkansas Midland, or to the Arkansas & Louisiana, as the case may be.

Q. I see here the Little Rock Junction Railroad .59 miles as a part of your leased roads, included in statement No. 2. I
618 think that is also in statement No. 7, isn't it?

A. Yes sir.

Q. I wish you would explain what that is.

A. The only explanation I can make of it is that it is a piece of local track in the City of Little Rock.

Q. That is the bridge, isn't it?

A. The Baring Cross Bridge.

Q. There are two bridges there, aren't there?

A. Yes sir that is right.

Q. I expect that is the old bridge at Little Rock. That is my information and I want to know about it.

A. It is located in Little Rock, but just where I cannot tell you. However, it does not enter into our mileage of The St. Louis, Iron Mountain & Southern Railway System.

Q. That is in your "foreign"?

A. Yes sir, it enters into the foreign and we are paying the taxes on it.

Q. Do you know the ownership of it?

A. No sir.

Q. Do you know what you pay for the lease or rental of it?

A. Yes sir.

Q. What is it?

A. $26,100.00 a year.

Q. Is that 6% of the bonds of that corporation?

A. I do not know how that rental is arrived at.

Q. You do not know what the bonds are?

A. No sir.

Q. That is what the St. Louis, Iron Mountain & Southern is paying for the rental of that property?

619 A. Yes sir that is what The St. Louis, Iron Mountain & Southern is paying as rental.

Q. You do not know who owns that property?

A. No sir.

Q. Mr. Johnson in this exhibit 2 I see the Memphis Branch owned 88.94 miles and leased 2.17 miles; where is that 2.17 miles?

A. That is on both sides of the River, including the trackage across the Memphis Bridge.

Q. That is in the same shape as the St. Louis, Iron Mountain & Southern Railway Co. of Memphis?

A. Yes sir. One mile of that is located in the City of Memphis.

Q. And how much of it out of the State of Arkansas?

A. One mile.

Q. And 1.17 miles in Arkansas—or is it less than that?

A. That mileage divides between the State of Arkansas and the City of Memphis, from the center of the bridge.

Q. And you include the bridge in that mileage?

A. Yes sir as leased mileage. Our track stops at Bridge Junction, the connection with the Frisco.

Q. This begins then at the bridge, where your Memphis Branch ends?

A. Yes sir. It begins on the West side of the Bridge.

Q. That is very much like this Van Buren proposition, about which I am inquiring. You own the rights across that bridge?

A. Yes sir, it is a leased track. We have rights to cross that bridge and we pay so much for it. There is 2.17 miles which

620 we lease from the junction of our line to the end of the Frisco track. That is the end of such part of it as we make use of in Memphis, and one mile of that leased track is East of the center of the bridge and 1.17 miles is West of the center of the bridge.

Q. And when you get off that leased track you strike this leased 1.07 miles in Memphis, which represents your Memphis Terminals?

A. Yes sir.

Q. You have 34.5 miles of leased lines to The St. Louis Southwestern Railway Co.; where is that Mr. Johnson?

A. That is the part of the line of The St. Louis Southwestern

Railway from Illmo, Mo., to Paragould, Ark., and 34.5 miles represents the mileage from Paragould up to the Missouri and Arkansas State Line.

Q. All of that mileage is in the State of Arkansas?

A. Yes sir.

Q. That is used solely for freight purposes?

A. Yes sir.

Q. There are no passenger trains run on that?

A. No sir.

Q. How do you carry in your accounts the rentals which you pay for these bridge terminals at Memphis?

A. That is the rentals we pay for the tracks themselves as distinguished between the operating expenses of the terminals?

Q. Yes.

A. The rental of The St. Louis, Iron Mountain & Southern of Memphis is a fixed annual rental and included in our rental account. The rental we pay for the Frisco Bridge is in the
621 nature of a bridge toll and is deducted from our freight earnings or passenger earnings.

Q. What do you do with it at Van Buren?

A. I believe that is deducted from the passenger earnings, when we have it.

Q. Will you look into that, if you are not certain, and answer that definitely?

A. Yes sir.

Q. Now, how about this Little Rock Junction Road, that bridge at Little Rock?

A. That is included in our rental account.

Q. Is that used exclusively for freight?

A. I cannot answer that. I do not know.

Q. I wish you would look that up and see if you charged that exclusively to freight or to freight and passenger?

A. We divide it between freight and passenger service just as we would any other rental charge, just as we would the rent of the St. Louis, Iron Mountain & Southern Railway of Memphis. It is included in our item of rental and taxes.

Q. Why do you make that distinction between that Van Buren bridge and the one at Little Rock? Does the one at Little Rock carry only freight and the one at Van Buren carry passengers and freight?

A. I do not know that the .59 miles at Little Rock is used exclusively for freight.

Q. Will you make inquiry and answer about that in the morning?

A. Yes sir.

Q. What is the Coal Hill Branch, 3.83 miles?

A. It is a little branch that runs from Coal Hill on the
622 Little Rock & Ft. Smith Railway down to Lloyds.

Q. That is purely a coal proposition?

A. Yes sir, it is purely a branch line, purely a coal proposition.

Q. It handles no passengers?

A. It would carry passengers if they were offered, but we do not run any passenger trains on it.

Q. The Ouita Branch .42 miles, is the same thing, I suppose?

A. Yes sir.

Q. It is purely a coal proposition and no passengers carried.

A. Yes sir, that is from Russellville up to the coal mines on the Ft. Smith Branch.

Q. What is this River track?

A. That is a connecting line in the Little Rock Terminals.

Q. Is that a track for the delivery of coal down there, or do you know?

A. I do not know what particular purpose it is used for. I think it is part of the connecting line from the Little Rock Union Depot over into East Little Rock, making connection with our Little Rock, Mississippi and Texas Railway. There is 1.22 miles in that connecting river track, but this particular branch is .82 miles.

Q. Will you please get us the information about that?

A. Yes sir.

Q. What is called the Ft. Smith Branch? Is that the Greenwood Road?

A. Yes sir, from Ft. Smith to Greenwood.

623 Q. What do you do with the Ft. Smith Suburban?

A. I do not know how that is handled. We have no record of it at all in our office.

Q. It must be an orphan.

A. I am afraid it is, what little I have heard of it.

Q. Isn't it used as a part of your terminals there?

A. I don't know. If it is, we don't pay for it.

Q. It does not enter into your books?

A. No sir.

Q. Mr. Johnson, I wish you would turn to the appropriate sheet of your exhibit 3, statement No. 1, covering the miscellaneous earnings; I believe you say you have not separated that between intrastate and interstate, because it could not be done; is that correct?

A. Yes sir.

Q. Why can't it be?

A. Well, for lack of information upon our part, would be the best explanation of that.

Miscellaneous revenue takes in all of the revenue accounts from number three to number nineteen. The statement itself shows No. 1 and No. 2, and then No. 5 and No. 6.

Q. No. 1 and No. 2 are what?

A. No. 1 is freight and No. 2 is passenger. No 5 is mail. That is the next one.

Q. No. 3 is what?

A. They are not shown in that order on the statement. Statement No. 1 shows account No. 5 following No. 2. No. 5 is mail. No. 6 is express. Now mail and express revenue amounts to $336,000.00, in round numbers. The total miscellaneous passenger revenue amounts to $273,000.00. With those two items there is absolutely no way that I know of by which they can be separated between intrastate and interstate.

624

Q. Is there any way to separate the expense of mail and express and the expense of mail and passenger?

A. In my opinion there is a reasonable method by which it can be worked.

Q. What is it?

A. On the basis of the mail and express revenue percentage to the total passenger revenue.

Q. That is a theory of division but I am speaking of an actual basis.

A. There is no actual basis.

Q. In the absence of an actual basis, you would *go* the revenue theory for the apportionment of the expenses?

A. I would adopt that as the best basis, in the absence of an actual one.

Q. Of course I understand your view on the revenue theory but I am asking you if there is not any way of getting at the actual facts.

A. No sir not from our records, and I cannot conceive of any method by which you could get at the actual division of mail revenue.

Q. I am talking now about expenses. You say of revenue.

A. Well, there is no way of getting at the expenses, either.

Q. You take one of our ordinary passenger trains, carrying a mail and express car, and that train has a locomotive and five other cars and one mail and express car. Couldn't you get down to
625 pretty near the actual cost of that?

A. I don't see how you could. You might take it on the basis of the number of cars in that train.

Q. Wouldn't that be pretty close to the mark?

A. Oh no sir.

Q. Why?

A. Because the cars hauling passengers might be more expensive than the cars hauling mail.

Q. You have a record of those cars, haven't you?

A. I have a record of the car mileage.

Q. You have a record of the particular cars in that train haven't you?

A. Yes sir.

Q. Couldn't you figure that all out?

A. Suppose the train itself makes ten stops, receiving and delivering passengers; that would have some bearing on the cost of that train, but just what proportion I don't know.

Q. Suppose it makes ten stops and receives mail and express, don't they receive mail and express where they receive passengers?

A. The expense of stopping to receive and deliver mail would not be nearly so great as the stops to receive and deliver passenger.

Q. It would be for express?

A. It might be for express.

Q. Is there any substantial difference between the stops made for mail and express and the stops made to receive and deliver passengers?

A. Yes sir I should think so. The stops to receive and de-
626 liver passengers would be a great deal longer than the stops to receive and deliver mail. In the latter case many times there would not be any stop.

Q. You don't think you could work out a real division of the expenses there?

A. I don't believe I could work out a basis that would be any better than the revenue basis.

I will say this: that the revenue basis and the car mile basis would bring about practically the same result, in my estimation.

Q. You have not attempted any division of this on a car mile basis?

A. No sir.

Q. Do you think it should be done on that basis?

A. I think an estimate could be made on that basis.

Q. Still it would be an estimate?

A. Yes sir.

Q. What I am endeavoring to reach is a basis for getting the actual figures.

A. Well, I don't see how you can.

Q. On either mail or express.

A. No sir.

Q. What is the next item of miscellaneous revenue?

A. The next item is "excess baggage."

Q. How could you handle that?

A. As between what?

Q. As between state and interstate?

A. That might be divided on the basis of the ticket report itself. I believe it could be divided between intrastate and interstate. But the percentage of excess baggage revenue to the total miscellaneous revenue is insignificant. It is only 4%.

627 Q. There is no advantage in dividing that and apportioning the expense by the actual expense, and not upon any estimated basis?

A. You could not get at the actual expense of earning excess baggage revenue, but you could divide it between intrastate and interstate revenue.

Q. The tickets themselves upon which the excess baggage was charged would fix whether it was intrastate or interstate?

A. Yes sir.

Q. And you have that record?

A. Yes sir.

Q. And that data could be obtained?

A. It could be worked up with a great deal of labor, but it is accessible data?

A. Yes sir.

Q. What is the next item?

A. The next item is "Parlor and chair cars."

Q. Can that be divided on an actual basis?

A. Yes sir, I believe the reports we have in our office would enable

as to determine whether that was intrastate or interstate. That revenue amounts to $1000.

Q. That is very small?

A. Yes sir.

Q. Milk revenue I see is the next item.

A. That is $15.00.

Q. Going back to parlor and chair car revenue, do you know about the relative amount of each of those classes, intrastate and interstate?

A. No sir.

625 Q. Have you an opinion about it, from your familiarity with the work?

A. No sir I have no opinion on that subject.

Q. The next item is "other passenger and train revenue."

A. That amounts to $480.00.

Q. What does that cover?

A. It is miscellaneous.

Q. It is the news privileges, and things of that kind isn't it?

A. No sir, it is not the news privilege (after examining statement) it is just what the heading would indicate, miscellaneous items not provided for by any of the regular revenue accounts.

Q. I would like to know what would fall in it, so we could have the record, so as to divide it between intrastate and interstate.

A. I don't know that I could tell you. There is no little—it is only $480.00. It may be one amount in any of the six months.

Q. You know those that are passenger could be easily located as to whether intrastate or interstate?

A. No sir, but if it is train revenue it may be either, or it may not be divisible.

Q. Find out about that Mr. Johnson. I don't know whether it would amount to anything but I would like to know. The next is switching revenue.

A. That switching revenue may be divided between intrastate and interstate by an examination of the original haul in each individual case.

Q. You have the records for that?

620 A. The record is there.

Q. You could do that?

A. Yes sir.

Q. You could locate all of that as between intrastate and interstate?

A. I think so.

Q. No. 10 is special train service. That is some trivial item. Do you know whether that could be located or not as between intrastate and interstate?

A. I should think it could. It is $141.00.

Q. No. 11 is the miscellaneous transportation revenue; what does that mean, Mr. Johnson?

A. There happens to be a deficit in that particular item during these particular six months. It would be miscellaneous items. I should think that could be divided as between intrastate and interstate.

Q. No. 12 is station and train privileges; how about those?

A. I don't see how you could divide that between intrastate and interstate, because in some cases it is a fixed charge which we make for train privileges within certain territories. It is a fixed payment. It does not depend upon the amount of business handled; or the business itself may be of such a nature that we could not determine. For instance, a man might have the privilege of operating upon trains in our Northern Kansas Division or upon our Omaha Division. The concession is leased to him in that way, to cover certain territory. Now I don't know how you would divide that revenue as between interstate and interstate. He has a right to operate upon all
630 trains within certain limits. That amounts to $1400.00.

Q. Is there any expense to that business?

A. Any expense to us, you mean?

Q. Yes.

A. No sir. The principal items in there are the rights to sell newspapers and fruit upon the trains and in stations; and the placing of these automatic vending machines, and such items as that.

Q. It is an item of revenue that has no attendant item of expense.

A. No sir, unless it would be indirectly the cost of maintaining the station building and the train in which these concessions are sold.

Q. They are already there for some other purpose and I presume are handled otherwise?

A. Yes sir.

Q. Your station privileges, part of it, could be assigned?

A. Yes sir part of it could be assigned to interstate and intrastate.

Q. All that could be assigned.

A. I don't know whether it could or not. A concession might be at Little Rock. There might be a good deal of State traffic which brings about the value of that concession at Little Rock; or, on the other hand, it might be the interstate traffic. I don't know that you have a right to assume that all of the revenue we receive from any local concession would be all intrastate or not.

Q. The incidental cost of keeping up that building is all charged to Arkansas.

A. Not to Arkansas intrastate.

Q. But you divide this on a revenue basis after you get
631 through. But it is charged up to the building in Arkansas?

A. Yes sir.

Q. That is a small item, isn't it?

A. Which one?

Q. That one we have just been discussing.

A. No sir it is a comparatively large item. It is $1400.00.

Q. How do you divide that between freight and passenger, or do you divide it?

A. Well, we divide that between freight and passenger upon the actual freight and passenger earnings. That is, upon the percent if the revenue in accounts Nos. 1 and 2.

Q. You divide between those two accounts on a revenue basis?

A. Yes sir, those two items.

Q. The next is parcel room receipts.

A. We have no revenue on that account at all.
Q. The next is storage of freight: can you divide that?
A. That could be divided by reference to the individual shipments. If it were an interstate shipment I would say it would be an interstate earning, and if it were an intrastate shipment I would say it would be intrastate earnings.
Q. The same would be true of the next item, the storage of packages, wouldn't it?
A. Yes sir, that amount is $300.00.
Q. The next is car service. That is what you receive from other companies for the use of your equipment?
A. No sir, this is demurrage. That might be divided between intrastate and interstate, by reference to the individual shipment in each case.
Q. Your records would show every car on which that demurrage would accrue?
A. Yes sir.
Q. And it could be readily divided, by spending enough labor on it?
A. Well, I could not very readily divide it. It could be done by expending enough labor upon it.
Q. The next is rent of buildings and other property: what do you say to that, Mr. Johnson?
A. I don't see how you can divide that. For instance your accountants are trying to do that now. As an illustration, you have the rental of a part of the depot at Newport, where we receive a rental from the Pacific Express Co. Now, I don't know how we could divide that as between intrastate and interstate. I haven't any idea. The Pacific Express Co. pays us $5.00 as the rent of a part of that depot in Newport. I used that case as an illustration because it was mentioned to me this morning. That gives you an idea of what this account consists of.
Q. I wish you would explain, generally, what is included in that item.
A. That is what it consists of. It is the rent of portions of buildings and of places upon our right of way. There are other items in there.
Q. How does that differ from the one we were discussing up here, about train and station privileges?
A. The train and station privileges is concession rent. I don't know that there is a difference between that. But with the station privileges we rent the right to do business there; to place these automatic vending facilities there; that is the principal item in there. Now if we rent a part of our depot building or a part of our office building at so much per month, that is credited to account No. 18.
Q. Take Little Rock. You had the old station rented to Mr. Pratt for hotel purposes.
A. Any rent paid by Mr. Pratt would be credited up to account No. 18.
Q. Suppose you had a saloon in there, would that go in as rental?
A. If he rented quarters for a saloon it would go into this account.

If Mr. Van Noy or Mr. Harvey rented a concession to set up a slot machine, it would not be considered a part of the rent of a part of that depot.

Q. Take the value of the property, couldn't that be ascertained and divided between intrastate and interstate?

A. The value of that would depend altogether on the patronage be received. And whether that patronage came from interstate traffic or intrastate traffic I couldn't tell.

Q. You would not know how to divide that item?

A. No sir I would not know any actual basis for dividing it between intrastate and interstate.

Q. There is a miscellaneous item there, Mr. Johnson—miscellaneous of miscellaneous; what does that include?

A. It is the account to which everything is credited which can not be credited to any of the other 18.

Q. What are in it, Mr. Johnson?

A. I don't know. I have never had any occasion to analyze it.

634 Q. I see it is a somewhat considerable item.

A. It is about $15,000.00.

Q. I wish you would look into it and see if it is capable of being divided between intrastate and interstate. Get a general idea of it so you can discuss it later.

A. An analysis of that account is being made.

Q. I just want to know generally the nature of it so we can find out whether it could be divided.

A. Very well.

Q. In this sub-division F to your exhibit, where you put in the assumed extra cost of handling intrastate traffic, I believe you said that was put in at the instance of the legal department: the question I want to ask you is that: you carry no such statement as that upon the accounts of the Company?

A. No sir, nor do we, as a matter of record, ever attempt to make any division between intrastate and interstate in our accounts.

Q. That is all a new question?

A. Well, it is not required in the accounts as we handle them now. It is worked up specially for cases of this kind.

Q. In various litigations of this kind this question of bookkeeping has been injected into the accounts?

A. Yes sir.

Q. Do you know who is the author of that system of bookkeeping on the revenue basis?

A. Who made the first division, you mean?

Q. Yes, where it originated.

A. The first occasion I know of is in that Smythe vs. Ames

635 case where that system was adopted.

Q. That was not the first time.

A. It is the first time I ever heard of it.

Q. That did not go into the book-keeping proposition. That used merely the question of expert opinion, in that case.

A. It was used in their final figures.

Q. It may have been. I know it was used as testimony.

A. Yes sir.

Q. Mr. Johnson, I wish you would explain the method of charging up ties on your road.

A. The ties themselves when purchased are charged to what we call our "Cross tie account." It is a holding account. Now, those ties as they are placed into the track are reported to our division officials by the foremen in charge of each particular section, showing the number of ties, replaced in the section; the average cost of the tie is ascertained from the records in the office, and the cost of those ties, based upon this average cost for the month is charged to the operating expenses.

Q. For that particular division?

A. For that particular mile of road.

Q. This purchase is by the entire Missouri Pacific System, isn't it?

A. Yes sir.

Q. This "pooling" arrangement is, then, with the St. Louis, Iron Mountain & Southern and the Missouri Pacific jointly. In other words, the Iron Mountain is a part of the Missouri Pacific, so far as the purchase of ties is concerned?

636 A. Yes, so far as the purchase of ties is concerned, yes.

Q. And in charging to Arkansas, or any other part of that system, the average price of ties then prevailing, you take the price prevailing throughout the entire system, to get an average price?

A. We take the average price of those ties to us.

Q. But whether that tie was purchased in Arkansas, Kansas, or Nebraska——

A. Without any regard to where the tie was purchased.

Q. And if you had one million ties and a quarter million of them were purchased in Arkansas, a quarter million in Missouri, and a quarter million in Nebraska, all at different prices in each of those States, they would be thrown together and the average price of those to the entire system would be taken: is that correct?

A. That would be the case if we should by any chance do such a thing as that.

Q. That is your system?

A. Yes sir, that would be the system. But I do not believe we are buying ties in any such quantities from any such locations as you have named.

Q. I was using that purely as an illustration.

A. The cost of those ties is determined without regard to where they are purchased. What I mean by that is, if we buy ties in Arkansas those ties may be used in Missouri. If we buy ties in Missouri they may be used in Arkansas. Now the cost of all ties is figured to an average cost.

Q. And that particular mile of road is charged with that average cost?

A. Yes sir.

637 What is the average cost of your ties during the period we have under inquiry?

A. I don't believe I can answer that generally. The average price, for instance, of white oak ties, which I understand were principally used at that particular time, October 1907, was fixed at 54 cents. To that is added various items of expense incurred by the Company in handling those ties, such as inspection, cost of loading, and the salaries of our Tie and Timber Department, are all added to the cost of this tie. The result was that on the Arkansas Division in 1907 the average cost was 59 cents per tie. Now, that average cost might vary slightly from month to month during any of those six months.

Q. If that tie cost in Arkansas 35 cents and the same sort of tie would cost you 65 cents in Missouri, and that tie was put on the road in Arkansas, Arkansas would not be charged with the 35 cents paid for the tie down there, but would be charged with the average price paid for the tie between those purchases in Arkansas, Missouri and elsewhere: is that right?

A. Well, Arkansas would be charged with whatever the tie cost us, without regard to what the price was in any locality. I cannot say where we buy those ties or what we paid for them at that particular time.

Q. But that is the system?

A. Yes sir, that is the system of arriving at that cost.

Q. Mr. Johnson, you make the entries for the charges of Company material, don't you? Those are made in your office aren't they?

A. Yes sir.

638 Q. What is the Company material charged to?

A. It is charged to the cost of operation of the road. It depends on what the material is.

Q. I did not frame my question properly. I mean, what price do you charge to transportation cost?

A. That is figured at two mills per ton per mile.

Q. There has been a change in the figure used on that in the last few years?

A. That is the only figure we ever used in that connection, and we only used that for a limited length of time.

Q. The two mills?

A. Yes sir. We figure that two mills in order to get the cost of handling company material into our operating expenses, in one case, and as a credit to operating expenses in the other. What I mean by that is, all our company material moved over the St. Louis, Iron Mountain & Southern Railway for the benefit of The Missouri Pacific Railway we charge to the cost of that material the freight charges at the rate of two mills per ton per mile. And that cost was charged to the maintenance of way department, or to any other department using the material, added to the price of the material. Then, in turn, it becomes a credit to the transportation expense of the operating division over which that company material moved.

Q. It used to be 7½ mills didn't it?

A. I don't know. That method of handling it has been a recent matter on our road.

Q. Do you know when it went into effect?

A. I believe it was the summer, or perhaps the spring of 1906.

Q. You don't suppose the two mills per ton per mile rep-
639 resents the actual expense, do you?

A. No sir.

Q. It is considerably more than that?

A. No sir, that two mills was never intended to cover the actual cost of transportation but simply the train and engine cost.

Q. Do you think it would cover that?

A. I guess it would come pretty close to it. I am speaking of simply the train and engine cost. It is an arbitrary amount. It is not based upon any actual cost.

Q. If the balance of trade, so to speak, betwen the Iron Mountain and the Missouri Pacific was one way, that would benefit the road in whose favor the balance of trade was, wouldn't it?

A. So far as the expense is concerned, yes.

Mr. MOORE: You mean assuming it was less than the charge ought to have been.

Mr. HILL: He says it is arbitrary. It would depend upon how the balance of trade ran.

Mr. MOORE: But take it in the direction of balance of trade and it would just reverse itself.

Mr. HILL:

Q. Turn to item 115, exhibit 3, statement 4, foreign agencies, freight: you have fifty four thousand and some odd dollars charged to Arkansas.

A. Yes sir.

Q. I wish you would explain that item.

A. Account 115 represents the cost of our soliciting agency, such as commercial agency, traveling freight agents, soliciting agents, etc. There are some few cases where an expense of that kind is located to the point or rather to the State in which the of-
640 ficial himself is located; but, as a rule, we consider all commercial or foreign agencies as a system expense, and that expense is pro-rated between the various States on the basis of gross earnings in each State.

Q. You have charged this amount to Arkansas. That includes all of the Arkansas business, interstate and intrastate?

A. Yes.

Q. And subsequently, in your further division, Arkansas, will be charged with a good proportion of that other intrastate freight, will it not?

A. Yes sir.

Q. Is that proper Mr. Johnson?

A. I think so.

Q. Do you think any of these foreign agencies obtain one pound of intrastate freight?

A. I think the expense of these foreign agencies will contribute toward an increase of intrastate business. The relation of these expenses to the intrastate business in Arkansas may not be direct, but I believe the intratate business should stand its proportion of that expense just the same as any other expense. I wish to say here, Judge Hill, that the commercial agency at Little Rock is treated in precisely the same way as the commercial agency at Pittsburg. We do not charge the expense of that commercial agency at Little Rock altogether to Arkansas.

Q. You throw them all together?

A. Yes sir, and it is pro-rated on the basis of the gross earnings in each State.

Q. How many of these agents have you in Arkansas?

641 A. Two or three, I have forgotten which—two, I believe.

Q. One at Little Rock and one at Ft. Smith?

A. Yes sir, and one at Memphis, just across the river.

Q. The man at Memphis would not get any intrastate business for Arkansas, and would not attempt to, would he? He is engaged entirely upon the interstate movement, isn't he, Mr. Johnson?

A. I would not say so. He is engaged in that locality and if he can solicit business on the Memphis Branch it is his duty to do so.

Q. Certainly, but would he solicit business between White Oak and West Point, for instance?

A. If he can help in developing any business in that locality, that is what he is there for.

Q. Do you think he helps to develop business between White Oak and West Point, or any other local points?

A. I don't know what he is doing, but that is his duty.

Q. To develop business between local points?

A. Anywhere he can get it. We have apportioned the expense of the Industrial Bureau to freight accounts, and the Immigration Bureau to the passenger account, and it seems to me that has a direct effect on the intrastate business. It helps develop the State.

Q. You think anything that helps develop the State you ought to charge up a proporion of it to the intrastate freight?

A. I think so.

Q. You have made all your expense accounts on that

642 theory, that if helps to develop Arkansas you would charge the intrastate freight with its proportion?

A. Well, I would not make it so broad as that. There is very little expense of the railroad which would especially develop the intrastate business, or any other business, but that is one account.

Q. So if there is an agency in London or Paris, it would help develop Arkansas?

A. I don't believe you could attempt to separate those agencies and say what should and what should not be apportioned to intrastate business. The proportion is very small.

Q. Small or large it is a charge.

A. Yes sir, it is a charge.

Q. What Industrial Agency do you think would affect intrastate business?

A. Any agency we might maintain that would be the means of bringing into the State of Arkansas, any industry, might have a tendency to increase our intrastate business.

Q. Have you such agencies?

A. Such industrial agencies? Yes.

Q. How much of this cost is attributable to them?

A. You mean what part of these industrial agencies included in this item?

Q. Yes.

A. All of their expenses.

Q. I want to get a general idea of what proportion their expenses bear to the commercial agencies?

A. I can ascertain that.

Q. Are those the only two classes included in there, the commercial and the industrial?

643 A. Yes sir. The immigration agencies are included in the passenger account No. 111.

Q. I am speaking of this freight item. Please get that statement also about the immigration bureau.

A. Very well.

644 Cross-examination of Mr. F. P. JOHNSON, continued as follows, by Mr. HILL:

Q. There are several things I asked you to get for this morning: have you prepared those Mr. Johnson?

A. No sir they are working on them now. Possibly we can get them sometime during the day.

Q. As to those matters, then, we had better pass them over until a little later.

Redirect examination.

By Mr. J. M. MOORE:

Q. Mr. Johnson have you a statement showing the earnings and expenses of operation of The St. Louis, Iron Mountain & Southern in the State of Arkansas for the six months ending June 30th, 1907?

A. Yes sir.

Q. Have you a statement also, of the same character, covering the earnings and expenses of the road for the year 1907?

A. That is all embodied in the one statement.

Q. You have a statement showing both periods; that is to say, the earnings and expenses for the first half of the year and one for the entire year?

A. Yes sir.

Q. Will you file the statement referred to as exhibit
645 8 to your testimony?

A. I will.

The paper referred to is marked F. P. Johnson exhibit 8.
Said exhibit is in the words and figures following, to-wit:

For Exhibit eight, see Volume 8, page 5275.

646 Q. Was this statement made up in the same manner that you have testified that the statement for the last half of the year 1907 was made up?

A. Yes sir.

Q. Are the results of operation for each period shown correctly upon the statement?

A. Yes sir. I would like to make an explanation in connection with these two statements.

Q. If there is any explanation that you think should be made in connection with that exhibit please make it.

A. The only explanation I wish to make is that the Interstate Commerce Commission classification of these accounts became effective July 1, 1907 and the accounts shown in these statements were of course made up on the basis of the accounting system in use by The St. Louis, Iron Mountain & Southern Railway Co. at that time. For that reason the individual expense accounts for the two periods of six months each could not be added together. The result is that in showing the results of operation for the calendar year 1907 we have simply added the surplus to show what the return would be, rather than to add the operating expenses for both periods.

Q. Do I understand that the manner of keeping the accounts was changed after July 1, 1907?

A. On July 1st, 1907 the Interstate Commerce Commission basis became effective upon our road as well as on all others.

Q. And that necessitated the change you speak of in the manner of keeping the accounts?

A. Yes sir.

647 Recross-examination.

By Mr. Hill:

Q. Mr. Johnson turn to the present return on the assessed valuation of the property after deducting taxes, and rentals, on those two statements. On the last half of 1907, which is the six months operation alleged in your complaint, I see your freight earnings for all business in Arkansas amounted to 9.90% of your property; and that your passenger earnings amounted to .66%.

In the first half of that year your freight earnings were 11.92% and your passengers earnings were 4.25%.

I have given them correctly, have I?

A. Yes sir.

Q. In other words, the six months period as alleged in your bill, showed in round numbers 2% decrease of freight earnings and 3.5% decrease of passenger earnings?

A. Yes sir.

Q. Do you consider the last half of 1907, especially in view of the question you have just answered, to be a fair and normal test of operations on The St. Louis, Iron Mountain & Southern Railway in Arkansas?

A. I do, under the two cent rate.

Q. I am asking more broadly than that. I am asking you is that a fair test, whether on a 2 cent rate or not.

A. I believe it would be.

Q. I would ask you separately as to the different classes of freight, but I am asking you now as an entirety.

A. I believe the six months ending December 31st will
648 be a reasonable period and a fair test of the result of operations on our line.

Q. A fair test for what period of a year?

A. A fair test for any period, to show the returns upon the property, or of the earnings to the road.

Q. Do you think that would be a fair, representative period of your earnings and expenses?

A. Yes sir.

Q. I will call your attention to the fact that the freight revenue in that six months period decreased 2%; or rather, the return upon your property from freight revenue decreased 2%.

A. Yes sir.

Q. How do you account for that?

A. I account for that in this way: the fiscal year ending June 30th 1907, was perhaps the best year in the history of The St. Louis, Iron Mountain & Southern Railway Co., and its earnings during that period if anything would be abnormal, so far as freight is concerned.

Q. On the passenger earnings, the 2 cent passenger act went into force the latter part of this first period didn't it?

A. Yes sir.

Q. Do you remember the exact date?

A. I think it was April 19th. It was in April.

Q. That gave 2½ months with the two cent passenger rate in force during that six months period?

A. It gave us 2½ months on local business. On interline busi-
ness it would not be that much. The interline business, of
649 course, is included in our accounts for one month later; so any interline business that went into the April accounts would be on the three cent basis, practically.

Q. Your interline business is not upon a three cent basis, is it?

A. Oh, yes. I do not mean now interstate business, or competitive business, particularly; but interchange business between one or more roads.

Q. Illustrate just what you mean. I do not quite understand that.

A. Business originating on the St. Louis Southwestern Railway for points on our line.

Q. I am speaking of passenger business, Mr. Johnson.

A. So am I. That would be considered as interline business, and the reports of that business from the St. Louis Southwestern Railway to us would be included in the May accounts. I should say there were practically four months of the business during the six months period which would be on the three cent basis.

Q. So far as the returns and accounting is concerned?
A. Yes sir.
Q. While according to the way you make up your accounts it would be really only about two months on the two cent rate?
A. Yes sir.
Q. When did the panic begin to affect your business, Mr. Johnson?
A. I should say in November 1907.
Q. You do not think it affected it as early as October?
A. Well, I don't think it affected the earnings of the line
650 to any great extent in October.
Q. But it began to be felt in November?
A. Yes sir.
Q. And continued to be felt for sometime thereafter?
A. Yes sir.
Q. Didn't it affect the passenger business more quickly than it did the freight business?
A. I cannot answer that, but would say generally that perhaps it would.
Q. Do you recall the date when the panic really began, in the New York papers, the latter part of October wasn't it?
A. It was in October. I do not know just what the date was.
Q. You filed on yesterday exhibit 6 containing various statistics; I want to invite your attention to some of them. First, the percentage of earnings, passenger, freight and others; have you that before you?
A. Yes sir.
Q. Read that please, Mr. Johnson, as to the passenger earnings.
A. The percentage of the passenger revenue upon all lines in the United States during the fiscal year ending June 30th 1907 amounted to 21.81% of the total earnings of all lines.
In group 8 (the group in which Arkansas is located) amounted to 21.63%.
On the entire St. Louis, Iron Mountain & Southern Railway for the six months ending December 31, 1907 the passenger earnings amounted to 19.33%.
Upon that part of The St. Louis, Iron Mountain & South-
651 ern Railway in the State of Arkansas the passenger earnings amounted to 21.05% of the total earnings.
Q. That shows that Arkansas's percentage of passenger earnings is better than that of The St. Louis, Iron Mountain & Southern System.
A. Yes sir by a little over 1%.
Q. And it is almost equal to the percentage of passenger earnings in the United States generally?
A. Yes sir.
Q. And it is almost equal to the passenger earnings in group 8.
A. Yes sir.
Q. Do you know how many States included in group 8 were then operating under the two cent fare?

A. Missouri, Arkansas and Kansas. I do not know what the rate in Texas was at that time.

Q. Are you right about Kansas during that period?

A. Kansas two cent rate law went into effect just about the same time that the Missouri rate did.

Q. Doesn't the Interstate Commerce Commission make up its statistics for the year ending June 30th?

A. Yes sir.

Q. When you take this percentage of that, was it for that period?

A. It was for the fiscal year ending June 30th as compared with the six months on the St. Louis, Iron Mountain & Southern in Arkansas.

Q. That was for the succeeding six months?

A. Yes sir. The statement shows that.

Q. Then the two cent fare laws in Missouri and Kansas were not in effect when this percentage was made in regard to group 8?

652 A. No sir the two cent fare was not in effect in Missouri but one month.

Q. And how about Kansas?

A. The two cent rate was not in effect for the entire fiscal year in any of these States. Just what the dates were I do not know, but it was during that fiscal year that the rates were changed.

Q. It would be something near the end of that fiscal year?

A. Yes sir near the end of that fiscal year.

Q. So there would be a very little operation under the two cent acts included in that 21.63% in group 8?

A. Yes sir.

Q. Is the same true of this percentage of the United States as a whole?

A. Yes sir.

Q. Whereas the percentage you get from Arkansas for the succeeding six months was entirely under the two cent rate?

A. Yes sir and for the St. Louis, Iron Mountain & Southern Railway.

Q. Yes, and for The St. Louis, Iron Mountain & Southern Railway. That was entirely upon the two cent basis?

A. Yes sir.

Q. I call your attention to the paragraph below the one we have just referred to "Average number of passengers per train mile." Read that please Mr. Johnson.

653 A. In the entire United States the average number of passengers per train mile was 51.

In group 8 it was 42.

On the entire St. Louis, Iron Mountain & Southern Railway it was 47.

The St. Louis, Iron Mountain & Southern Railway it was 49.

Q. Arkansas was carrying within two passengers of what was carried in the United States as a whole?

A. Yes sir.

Q. And carrying 7 passengers more than the average in group 8?

A. Yes sir.

Q. And two more than on the St. Louis, Iron Mountain & Southern Railway System as a whole?

A. Yes sir.

Q. Under the head of "Average revenue per passenger per mile in cents" I see that in the United State as a whole the amount is 2.014 cents.

A. Yes sir.

Q. Whereas in Arkansas it is 1.903 cents.

A. Yes sir.

Q. I see in the average revenue from each passenger it was 64.6 cents in the entire United States.

A. Yes sir.

Q. And for Arkansas what was it?

A. 82.527 cents.

Q. I do not understand this last sub-division there "Density of passenger traffic"; I wish you would explain that Mr. Johnson.

654 A. It shows the volume of business carried for each mile of road, and it is ascertained by taking the total number of passengers hauled one mile and dividing that by the track mileage of the railroad. It shows the volume of business carried over the lines represented by the headings of the various columns.

Q. Dropping to the next paragraph, freight statistics, I will ask you to read the average number of tons per train mile.

A. In the entire United States it amounted to 357.35 tons.

In group 8 to 265.3 tons.

On the entire St. Louis, Iron Mountain & Southern Railway System it was 385.68 tons.

In the State of Arkansas 407.41 tons and per train mile.

Q. Now read the average revenue from each ton carried, expressed in dollars.

A. In the entire United States it was $1.05.

In group 8 it was $1.91.

On The St. Louis, Iron Mountain & Southern Railway System it was $1.65.

On The St. Louis, Iron Mountain & Southern Railway in the State of Arkansas $1.39.

Q. Mr. Johnson please give us the statistics there on the density of freight traffic.

A. Density of freight traffic in the United States as a whole was 1,052,119 tons.

Q. And for Arkansas what is it?

A. 487,919 tons.

Q. Is that worked in the same way you have just expressed as to the passenger?

A. Yes sir it is the number of tons hauled 1 mile divided 655 by the track mileage.

Q. I failed to ask you, when I was inquiring about your percentages of passenger revenue, the relative percent of freight revenue: Turn to that paragraph, please, and give us the percentage of freight revenue to total revenue?

A. That is the 5th line in the earnings from operation?

Q. Yes.

A. Freight revenue in the entire United States amounts to 70.44% of the total earnings.

In Group 8 it amounts to 69.73%.

On the St. Louis, Iron Mountain & Southern, 72.06%.

In the State of Arkansas, 71.51% of the total earnings.

Q. On the percentage of expenses to earnings on the second sheet of this Exhibit 6—I want to first ask you a question to see if I understand that: I will put an illustration to you: For every one hundred dollars of revenue does that 67.53 mean it would cost $67.53 for expenses?

A. To earn $100 in revenue it costs $67.53.

Q. It costs $67.53 in the United States as a whole to earn $100 of revenue?

A. Yes. sir.

Q. In Group 8 it costs $64.34?

A. Yes, sir.

Q. On the St. Louis, Iron Mountain & Southern it costs $74.24?

A. Yes sir.

Q. And on the St. Louis, Iron Mountain & Southern in Arkansas it costs $73.88?

A. Yes, sir.

656 Q. And on the St. Louis, Iron Mountain & Southern in Arkansas it costs $73.88?

A. Yes, sir.

Q. Your St. Louis, Iron Mountain & Southern expenses in Arkansas make it cost almost $9.00 more to earn $100 than it does in Group 8?

A. Yes, sir.

Q. Now let me see if I understand his apportionment of General Expenses: Out of every $100 of expenses, taking the United States as a whole, $3.74 is apportioned to General Expenses: Is that right?

A. That is what that perventage means, yes, sir.

A. And in Arkansas it would be $5.94?

A. Yes, sir.

Q. I invite your attention to statement No. 4 of Exhibit 3, Mr. Johnson: As I understand this statement, it is the operating expenses of the entire St. Louis, Iron Mountain & Southern Railway for the six months period ending December 31, 1907; and then a proportion of that is assigned to Arkansas; and a percentage of that proportion assigned to Arkansas.

A. That does not make the statement clear.

Q. I wish you would make it clear.

A. The first column shows the expenses of the entire St. Louis, Iron Mountain & Southern Railway.

Q. For the different items enumerated?

A. Yes, by the five different expense accounts.

657 The second column shows the expense of the St. Louis, Iron Mountain & Southern in the State of Arkansas.

The third column shows the percentage of the Arkansas expenses

to the total. But it does not mean, for instance in account No. 1, that we have arbitrarily charged 56% to the St. Louis, Iron Mountain & Southern expenses to the State of Arkansas.

Q. I did not mean to imply that by my question, but wanted to get the percentage of that expense which was assigned to Arkansas. I notice some of that percentage are quite above the average, and some quite below; and it is to those I desire to call your attention. What is shown to be the average percentage charged to Arkansas in your first paragraph?

A. You mean total for maintenance of way and structures?

Q. Yes.

A. On the first page it is shown to 54%. That is adjusted on the third page of that statement, and is made 53%. That is the actual percentage.

Q. Some of these are items that have gone into the "pooling" arrangement.

A. It is an estimated monthly charge in the detail, and that is adjusted on the succeeding page.

Q. That is only in a few cases?

A. Yes, sir; but sometimes it does affect the Department's expenses.

Q. Broadly speaking, the percentage of the St. Louis, Iron Mountain & Southern in Arkansas to the entire St. Louis, Iron Mountain & Southern, is about 54%.

A. That is shown in statement 3 as 53%.

658 Q. In this particular paragraph the amount assigned is 54%. The first item to which I call your attention is "ballast," which amounts to almost $32,000.00, as a whole; of which 70% was spent in Arkansas; Why was more money spent in Arkansas on that item than elsewhere in the System? Why such an abnormal percentage for Arkansas?

A. I cannot answer just why. While the proportion of the total expenses expended in Arkansas might be a little more than the average, the amount itself is not more than 2½% of the total maintenance expenses; and accounts of that kind are very apt to fluctuate from month to month, and between States. The condition of the track, perhaps, justified that expenditure in Arkansas at that particular period.

Q. Ought such a large amount—such a large percentage as that be charged to a six months' period?

A. This first column that shows the total for the St. Louis, Iron Mountain & Southern is for the same period. Now, it may be that the conditions at that particular time required the expenditure in Arkansas in excess of the expenditure for the same kind of expense in other States.

Q. But we are taking this as a normal year—or, rather, as a normal six months of a year.

A. You would not find any period or any year that would be absolutely normal in every item of expense of a railroad. These accounts are bound to fluctuate from year to year.

Q. That is a pretty heavy fluctuation, 70% on that item?

A. I should not say so, if the track was maintained in exactly the

same condition on the St. Louis, Iron Mountain & Southern at all times, you would require 52% to 53% of that expense anyway; and that it merely increased 17% on a small amount.

650 Q. Wouldn't that mean that the next month would have that much less per cent of expenses on that ballast account?

A. Not necessarily.

Q. It would, naturally, wouldn't it?

A. I would not say so. It may be that the entire St. Louis, Iron Mountain & Southern would require a great deal more than $32,000 for ballast within the next two months. Repairs and renewals of that kind are made in spots, not as general work all over the System. It is done just as it is required.

Q. The next item, account No. 45, is "Incidentals": Now what are "incidentals"?

A. That is just the same as was explained yesterday, under maintenance of equipment incidentals.

Q. It is the "junk shop"?

A. Yes, sir, the junk shop for maintenance of way accounts. In this case it amounts to $538.28.

Q. Little in size but large in proportion?

A. Yes, sir.

Q. Coming to the next paragraph, "Maintenance of Equipment," under item 40 I find "Tools and mac-inery, repairs of—70%: How are your tools and machinery repairs, and their accounts adjusted?

A. This account for repairs to tools and shop machinery and heating and lighting, are charged to an operating division, or, rather, they are charged to the jurisdiction of each Master Mechanic. In Arkansas, of course our principle Master Mechanic is at Little Rock, which perhaps entails a heavier expense than it does at any other division point.

Q. Why?

660 A. Because it is larger than any other Division point.

Q. Why?

A. Because it is larger than any other division point on the St. Louis, Iron Mountain & Southern Railway.

Q. Aren't those shop expenses apportioned over the entire Missouri Pacific System?

A. No sir not miscellaneous shop expenses, such as that item.

Q. What shop expenses are apportioned over the entire system?

A. The repair account is apportioned over the entire system. But the repairs to tools and shop machinery are localized to the particular division.

Q. Isn't this a repair account?

A. When I speak of a repair account I mean cost of repairing equipment, such as locomotives and cars.

Q. Why do you make a distinction between repairing those cars and locomotives and repairing the tools and shop machinery?

A. The only reason that I can give for that is that we have never thought it proper to pool the miscellaneous shop accounts. We localized them to the division where they occurred. If we pooled

them perhaps Arkansas would be compelled to stand a proportion of the other shop accounts.

Q. It does stand that on repairs to cars and locomotives?

A. Yes sir.

Q. Well, then, why should not it also stand it on repairs to tools and shop machinery?

661 A. The only reason is that the amount is too small to handle that way.

Q. It is a pretty considerable item here. I see it is $63,000.00.

A. Yes, out of one million dollars.

Q. That grows out of the Baring Cross shops?

A. The $48,000.00 does, yes.

Q. I believe this is $63,000.00.

A. It is $63,000.00 on The St. Louis, Iron Mountain & Southern Railway.

Q. And $48,000.00 on the Baring Cross shops, which runs up the percentage for Arkansas to 77.

A. Yes sir.

Q. Does that uniformly run that high, assigning that account to Arkansas?

A. You mean the proportion chargeable to Arkansas?

Q. Yes.

A. I would say that is a normal amount. I do not believe it fluctuates to any great extent and the basis for apportioning it has always been the same. Whatever the charge is on The St. Louis, Iron Mountain & Southern Railway proportionately 77% would be charged to Arkansas.

Q. You have repairs to locomotives assigned to Arkansas 53%.

Repairs to passenger cars 59%.

Repairs to freight cars 53%.

Repairs to work cars 57%.

And yet you have this item 77%. So it looks like Arkansas gets the worst of it when it doesn't go into that repair pool.

662 A. Well, if we were to pool this amount on the same basis we pool the repairs to locomotives and cars I am inclined to think the amount of money that is charged to the State of Arkansas would be just as large as the amount we have charged under that system.

Q. Why?

A. You understand our pooling arrangement, so far as repairs to equipment is concerned, is a pool between all of the Missouri Pacific and the Iron Mountain properties. And if we were to pool the share for repairs to tools and machinery, we would then include in one amount not only the $63,000.00 but the amount expended upon the other lines of the Missouri Pacific System.

Q. That is exactly what you do with your repairs to locomotives and cars isn't it?

A. Yes sir.

Q. Arkansas comes out better on that than where you do not pool it?

A. The shop account is all of a local nature, and if the cost of that

item on the Missouri Pacific is larger than it is on the Iron Mountain then the State of Arkansas would not be any better off under the pooling arrangement than she is now.

Q. The shop at Baring Cross is the biggest one you have, isn't it?

A. I think not.

Q. What is a bigger one?

A. I think the one at Sedalia is larger now.

663 Q. It is the biggest one on the St. Louis, Iron Mountain & Southern Railway.

A. Yes sir. But the pooling arrangement as to repairs of equipment extends not only over the St. Louis, Iron Mountain & Southern Railway but The Missouri Pacific as well.

Q. You think the Sedalia shops are as big as those at Baring Cross?

A. Yes sir.

Q. Those are the two biggest shops you have?

A. Yes sir.

Q. How many other shops have you?

A. We have repair shops at various points. We have them at Sedalia, Fort Scott, Coffeyville and Atchison.

Q. The next item I find here is "Incidentals" account, where Arkansas gets 57% out of the junk shop.

A. Those incidental items are of a local nature and are charged to the district on which they are incurred. The incidental charged there is $4,000.00.

Q. Here is a low one I find, item 52, "Station service, freight, 43%;" why should that be lower there and a less charge to Arkansas?

A. The station service is a local expense and it is charged to the State in which it is actually incurred.

Q. Item 56 "Yard supervision" I notice is only 47%. I suppose the same reason controls that.

A. That is right. We are not charging to the State of Arkansas any expense incurred on The St. Louis, Iron Mountain & Southern Railway in Missouri. And I presume our station and yard facilities in Missouri amount to a good deal. You will find quite a number of these items that are below the average.

664 Q. I believe I have called your attention to the lowest ones.

A. There are quite a number of those yard accounts that are less than the average.

Q. Item 81 "injuries to persons;" I see you have a pretty heavy account against Arkansas on that. Is that thoroughly localized?

A. Injuries to persons are charged to the exact location in which that injury occurs. It is the misfortune of the State of Arkansas that that charge is larger than the average.

Q. They seem to be paying a pretty good price for stock down there.

A. Most of the stock killed on the Missouri Pacific System is killed in the State of Arkansas.

Q. It is pretty fine stock.

A. I don't know about that. I never settled any of the claims.

Q. I will have to call the Claims Department to testify to that.

A. They would probably say it was claimed that it was very fine stock.

Q. You have a very high charge there in item 83 "loss and damage to baggage and personal property;" 81% of that occurs in Arkansas?

A. That loss is charged between the points between which the baggage itself moves. That is not an estimate.

Q. Do you think it is normal to have 81% of that item charged up to Arkansas? It is a small item but a large percentage.

A. It may be made up of a few claims that came in at that particular time. There is not any explanation of the fact that 81%
665 of the baggage claims were incurred in the State.

Q. I see here a small item but a large percentage item 107 "flood damages;" do you know whether that covers the usual flood damages or whether there was some large flood down there that accounts for that?

A. It must be a normal accident. It is caused by high water.

Q. There is nothing abnormal in the figures but the large percent of it. The entire amount of it is charged to Arkansas.

A. There is nothing abnormal in that amount, $2900.00. The conditions in Arkansas would justify that as against the other States.

Q. Item 111—I asked you to look that up.

A. That will take some time. I think they will get that some time today.

Q. Well, we will pass that until you get that information.

Item 127 "Law expenses" that is 64% in Arkansas; are your lawyers more expensive down there than elsewhere?

A. The lawyers are not more expensive than elsewhere but litigation sometime is.

Q. What do you include in that item?

A. I include in there a proportion of our general law expenses. That is, the general attorneys here at St. Louis, who cover the entire System. I include in that all of the expenses of the lawyers——

Q. How do you divide those General Attorneys between Arkansas and the balance of the System?

A. A system man is divided upon the basis of the gross
666 earnings in the several States. In other words, if we have one thousand dollars expense of a system nature, and forty percent of the entire earnings of the system are earned in Arkansas, 40% of that expense would be charged to Arkansas.

Q. Does that account for that high percentage of law expense?

A. No sir.

Q. What does?

A. The local law expense in the State, as against the local law expense in other States. For instance——

Q. But all the Attorneys are not confined to Arkansas.

A. Then it would not be charged to Arkansas.

Q. Take it in my town, Fort Smith, it would be distributed over Western Oklahoma and Arkansas.

A. Then a portion is charged to Oklahoma and a portion is charged to Arkansas.

Q. Then it is not all in this item.

A. All the Attorneys' expenses whose work is confined to Arkansas, is charged to Arkansas.

Q. And those whose work is done in some other States you divide on some equitable basis?

A. Yes sir, on the basis of the proportion of territory in each State.

Q. Some work is done by the Arkansas Attorneys in Louisiana.

A. In that case the work is not charged to Arkansas. We have one Attorney whose work covers partly Louisiana and partly Arkansas. Those expenses are divided.

667 Q. And it is the same with Missouri? Haven't you some Attorney in Arkansas who handles Missouri business?

A. I don't think so. The Missouri Attorneys work entirely in Missouri.

Q. But I believe some of the Arkansas Attorneys work in Louisiana. And in Fort Smith the same Attorney has charge of Arkansas and Western Oklahoma.

A. Yes sir but there is a large amount of law expense local to the State.

Q. Outside of the salaries of your Attorneys, what other items are included in there?

A. Court costs and miscellaneous expenses.

Q. Don't they follow the judgment, in personal injury cases?

A. Yes sir if a judgment is rendered. But sometimes there are expenses in connection with these suits before any judgment is rendered, and in the absence of any liability we charge it to general expenses.

The expense of compiling statistics for a case of this kind is charged to law expenses and to the State in which the suit is brought.

Q. Let me understand you, would any part of your Rate case in Missouri involving the St. Louis, Iron Mountain & Southern Railway be charged to Arkansas?

A. No sir.

Q. And no part of this case would be charged to Missouri?

A. No sir.

Q. Didn't I understand you awhile ago to say that 40% of your general law expenses would be charged by gross earnings—or did you use 40% as an illustration?

668 A. I used it as an illustration. I said, if we had a system charge of $1,000, and 40% of the gross earnings of the Missouri Pacific System was earned in Arkansas, 40% of the expense would be charged to Arkansas.

But a rate case of this nature is charged to the state in which the suit is brought. I mean by that, the State responsible for the suit. All the expense of the Missouri Rate Case was charged to the state of Missouri; and all the expense in this case will be charged to the state of Arkansas.

Q. I want to get at your line of adjustment between judgments and law expenses: take for illustration a man who is killed by a passenger train, and you adjust that without suit and pay a given amount of money: where is that sum charged?

A. It is charged to "Injuries to persons."

Q. Under the passenger side division?

A. Yes, sir.

Q. That is adjusted by your lawyers without litigation: would any part of that service go into those law expenses?

A. Any part of what service?

Q. The service in this settlement of this suit?

A. The Attorney's salary and expenses will go into the law expenses; but the judgment or the amount paid in settlement would go into "Injuries to persons."

Q. That is what I supposed, but I understood you to say that the court costs go into this.

A. If we have a law suit and there are incidental expenses in connection with the suit, which must be paid, before the suit is
669 settled or judgment paid, we consider that a law expense.

Q. It might be a law expense yet would not be a Court expense.

A. Perhaps I am wrong in distinguishing between court expenses and the incidental expenses of the law department.

Q. What you mean is that only the incidental expenses of the law department go into this sub-head?

A. That is it.

Q. The court costs would necessarily follow the judgment in its assignment to your different departments?

A. Yes sir.

Q. After that explanation, do you know of any reason why the proportion of law expenses in Arkansas should be 64%?

A. Well, yes. It costs a certain amount of money to maintain an organization of any kind. The greater the volume of business or the greater the territory covered by that organization, the less will be the proportionate charge.

Q. That covers about 52% I believe. But you have it 64%.

A. The density of traffic in Arkansas is a good deal larger than it is in other States. So far as our law department is concerned, we maintain a separate organization in each State. Our law department in Missouri, so far as the actual work is concerned, is entirely separate and distinct from that of Arkansas. And I presume it would be in all other States if the business there was large enough to justify it.

Q. The next item I see down there that is considerably above the average is "Dining Cars": I believe that is a balance,
670 isn't it, Mr. Johnson?

A. That is the net deficit in the operation of dining cars. That amounts to $1100.00. Now that is brought about by the fact that we are not operating dining cars on all of the trackage of the St. Louis, Iron Mountain & Southern Railway; and a larger proportion of the main line mileage of the Iron Mountain is located in Arkansas than in any other State.

Q. How much larger proportion?

A. I could not say.

Q. You have an exhibit here which will show that?

A. It will come pretty close to 60%.

Q. Roundly speaking, there is 60% of the main track in Arkansas, but your expense on that is 63% ; that probably accounts for that.

Mr. Johnson, can you ascertain actually what percentage of intrastate and interstate traffic use the dining car service?

A. No sir.

Q. You could ascertain that for the parlor cars, but I suppose you could not for the dining cars.

A. I haven't any idea what proportion of the interstate traffic would patronize the diner, as against the State traffic.

Q. There would naturally be much less patronage from the State traffic, the runs being much shorter, than from the interstate, wouldn't there?

A. Well, perhaps it would.

Q. That would be a natural inference.

A. I would not say that in Missouri. I don't know what
671 the conditions are in Arkansas.

Q. That is the natural inference one would draw from those facts, isn't it?

A. Perhaps the largest portion should be charged to the interstate business.

Q. You have "Rentals" down here. I believe in your recapitulation you figured out the percentage on that as 720?

A. Yes sir.

Q. I wish you would explain that item Mr. Johnson.

A. The rental account includes the amount we pay for the use of other lines, less the amount that other lines pay us for the use of our lines; and the rental itself is located to the State in which the facility rented is located. On The St. Louis, Iron Mountain & Southern as a whole our net charge for rentals amounts to $3,000.00.

Q. That is what you get off other railroads?

A. No sir it is what we pay other railroads less what other railroads pay us.

Q. That $3,000.00?

A. Yes sir.

Q. Proceed.

A. In Arkansas the amount we pay other railroads for property used in Arkansas, less what other railroads pay us for the use of our property located in Arkansas, amounts to $21,000.00.

Q. What properties are those Mr. Johnson?

A. There is quite a list of them.

Q. Give us the heaviest ones.

A. The heaviest one, perhaps, is the St. Louis Southwestern Railway.

672 We have trackage rights over the St. Louis Southwestern from the State line to Paragould.

Q. That is on that trackage arrangement you spoke of yesterday.

A. Yes sir. We pay rental for joint facilities at Texarkana. We pay rental for the mileage in Memphis, spoken of yesterday.

Q. Is that included in this item?

A. Yes sir that is included in here. We pay mileage for the use of the Little Rock Junction Railroad.

Q. And the Van Buren Bridge?

A. Yes sir and the Van Buren Bridge.

Q. Are there any other heavy items you recall?

A. No sir no other heavy items that I recall, but there are a number of small items.

Q. Did I give you a memorandum yesterday to look more fully into the Little Rock Bridge proposition as well as into the Van Buren bridge proposition?

A. You said you wanted to find out just where the Little Rock Junction Railway was located.

Q. Yes and I intended to ask you to look up the status just as you were to do for the Van Buren Bridge; find out who owns it, how much rent you pay and how much the bonds are. Get me all the information about that, as you promised to do about the Van Buren Bridge. And also let me know how you assign that. I presume from putting in this rental it would be assigned to freight and passenger.

A. Yes sir. We take our rental charge in total and divide that between freight and passenger.

673 Q. I understood you yesterday to say that the St. Louis Southwestern Railway would be charged only to freight, and that the Van Buren Bridge would be charged very likely only to passenger.

A. Not so far as rental is concerned. The expense of operating the St. Louis Southwestern track would be charged to freight only.

Q. But the rental would be charged indiscriminately.

A. Yes sir.

Q. Although as a matter of fact it is used for freight only?

A. Yes sir.

Q. After you get us that information I will question you further on that matter.

I see here an item of "Taxes"—but I suppose like death taxes cannot be escaped.

A. That is 70% of the total amount of taxes paid on The St. Louis, Iron Mountain & Southern.

Q. Mr. Johnson, in preparing the statistics used by the road you used the revenue theory in preparing any of your statistics for your own use?

A. We divide all of our system charges, of a general nature, on the revenue basis.

Q. What do you call "System charges"?

A. Such charges as I have explained, and take all of our general offices, say at St. Louis, where the duties of the officials and employees of the various departments cover the entire system.

Q. You divide that on the gross revenue basis and apportion it to the different departments on the gross revenue basis?

A. To the different States and operating divisions, yes sir.

674 Q. You don't do it to States, do you? Don't you do it to the different divisions?

A. That brings about a charge to the State. All of our statistics are compiled by what we call "Accounting District"; that is, the

system is divided up into small pieces of track, and those divisions are made along State Lines.

Q. Not entirely so, are they Mr. Johnson?

A. Yes sir.

Q. Take Ft. Smith, for instance, and these law expenses we were talking about; Mr. Miles is the General Attorney for Arkansas and Oklahoma.

A. Yes sir.

Q. That does not follow a State Line.

A. That expense is divided into accounting districts that "Break" at State Lines. We would charge Mr. Miles' expenses to our Fort Smith District and to our Waggoner District. Our Waggoner District is located in Oklahoma, and our Ft. Smith District is located in Arkansas.

Now take our St. Louis offices, and all of the expense there is divided to each one of these fifty one accounting districts on the basis of gross earnings. Those accounting districts added together make the State expenses.

Q. Do you make any statistical divisions according to the expense of operation?

A. We have never been called upon for any such statistics as that.

Q. You have not prepared them for your own use?

A. No sir except to carry out this statement of Judge Vandeventer's, that we filed here.

Q. That is purely for litigation purposes?

675 A. Yes sir. We have no regular statistics separating intrastate from interstate business.

Q. Have you any regular statistics separating freight and passenger?

A. We make it for the benefit of our operating department.

Q. What basis do you use in that?

A. The division between freight and passenger on common accounts, generally is made on the train mileage basis.

Our yard accounts are divided arbitrarily, 95% to freight and 5% to passenger. That percentage is based on the mileage of switch engines engaged in each class of service. The percentage itself was worked up some four or five years ago and is based upon the mileage of some four or five years and it will be used indefinitely.

Q. Are there any other bases which the road uses in compiling its own statistics?

A. Well, that would depend altogether on the kind of statistics that were wanted. Take some of our accounts, and we divide them for certain purposes on any number of bases.

Q. That is what I wish you to explain as an accountant, what various bases are used.

A. Take our mixed train expense. We have a certain number of mixed trains, and the wages of the employees of those trains are sometimes divided between freight and passenger. That is done on an arbitrary basis of 25% per passenger and 75% for freight. Those percentages are based upon the general percentage of the passenger earnings to the total earnings.

Q. Not on the basis of general expenses in the freight
676 earnings or in the passenger earnings.

A. That is based upon the gross passenger earnings and gross freight earnings.

Q. The expense of the total amount is not taken into account in dividing the expenses.

A. For mixed trains it is the expense itself we wish to divide.

Q. I didn't understand you. I see your point now. Go ahead.

A. That is about the only basis I know of for compiling regular statistics. Every department of a railroad will compile statistics for its own use.

Q. What basis is used for compiling these various statistics?

A. I have just given it to you. The principal basis is the train mile basis; it is the principal one for dividing the expense between freight and passenger.

Q. You use track miles, sometimes?

A. The track mile basis is used only where we have a man in charge of track miles, a Superintendent or a Road Master, who has jurisdiction over tracks located partly in one State and partly in another. That would be divided between those States upon the percentage of the track miles under his jurisdiction in each State.

Q. What percentage of your operating expenses do you divide on the basis of gross earnings, between freight and passenger?

A. I haven't the slightest idea.

Q. General expenses?

A. It would be general expenses and it would be traffic
677 expenses; and it would be a large proportion of the amount included in our expense account No. 21.

Q. Which is No. 21?

A. It is "Superintendents" under "Maintenance of Way."

Q. That is a general expense.

A. Well, it is entirely different from what we call "General Expense" in this statement.

Q. I understand that, but it is a general expense?

A. Yes sir, it is common to the entire system.

The same thing would apply to account No. 38, which is the "Superintendents" account under "Maintenance of Equipment".

Q. It is all a "Superintendents" account, of whatever nature.

A. Yes sir. Where there are general officials, that would be divided on that basis. No. 90 is another account.

Q. That is still another "Superintendents" proposition?

A. Yes sir. Practically everything under "Traffic expense" accounts 110 to 117; and everything that is not located in "general expense" accounts 121 to 129.

Q. What you might call "general common expenses"—common in general?

A. All expenses that are common to all parts of the line are divided on the basis of gross earnings.

Q. It amounts to something like 8 to 10%, possibly, of the total expenses, doesn't it?

A. I think it would be more than 10%. I think it would be a good deal nearer 12 or 14%.

678 Q. Referring to the question of rentals, the S. Louis, Iron Mountain & Southern Railway has a controversy down at Little Rock with the Bunch Elevator: I don't care about going into that controversy, but I just want to know whether that elevator property would be included in your rental.

A. Any rental we would receive from Mr. Bunch would be included in "rentals."

Q. I just wanted to know where to locate that matter. That would be in the "rentals" we have been discussing, like the Van Buren Bridge, etc.?

A. Yes sir. I understand that Mr. Wharton's men are now making an investigation of that matter.

Q. We want to know where it would be on this statement of yours. We know where it is actually.

A. It would be in these rental accounts. It goes into the "miscellaneous earnings" account No. 18.

Mr. HILL: That is all I have to ask Mr. Johnson until he gets the information he has been requested to furnish.

Thereupon the witness, F. P. Johnson, is temporarily withdrawn.

679 R. E. KIMBELL, a witness of lawful age, being duly produced, sworn and examined, testified as follows:

Direct examination.

By Mr. J. M. MOORE:

Q. Please state your name, residence and occupation?

A. R. E. Kimbell; St. Louis, Missouri; Assistant Auditor of the St. Louis Southwestern Railway Company.

Q. How much experience have you had in the accounting work of that railroad, Mr. Kimbell?

A. I have been connected with the St. Louis Southwestern Railway for twenty-three years.

Q. State in what capacities you have been so connected?

A. During the entire time in the auditing department. For the last six years I have held the position of Assistant General Auditor.

Q. Do you have charge of the records and of the accounts of that Railroad?

A. I do, under the direction of the General Auditor.

Q. Have you had any statements prepared, to be used as Exhibits in the case of the St. Louis Southwestern Railway vs. Robert P. Allen, et al.?

A. Yes, sir, I have.

Q. Have those statements been prepared under your directions?

A. They have.

Q. Have you personal knowledge as to the correctness of the statements?

680 A. I have.

Q. Do they reflect correctly what is shown by the books and records of the Company?

A. They do.

Q. Have you a map showing the line of the St. Louis Southwestern Railway?

A. Yes, sir, I have. (Witness produces map.)

Q. What part of that line does that show?

A. It shows the entire St. Louis Southwestern System, comprising the lines in Illinois, Missouri, Arkansas, Louisiana and Texas.

Q. Are the lines in the different States marked so as to separate them in any way?

A. Yes, sir; they are distinctly marked in red.

Q. Will you file a copy of that map as Exhibit 9 to your testimony?

A. I will.

The map referred to is marked "R. E. Kimbell Exhibit 9. Said Exhibit is in the words and figures following, to-wit:

For Exhibit nine, see Volume 8, page 5287.

681 Q. Have you a statement of the track mileage of the St. Louis Southwestern Railway?

A. Yes, sir, I have.

Q. Will you file that as Exhibit 10 to your testimony?

A. I will.

The statement referred to is marked R. E. Kimbell Exhibit 10." Said Exhibit is in the words and figures following, to wit:

For Exhibit ten, see Volume 8, page 5289.

682 Q. Have you a statement showing the operating revenues and the operating expenses, taxes and rentals for the St. Louis Southwestern Railway in the State of Arkansas, for the year ending June 30, 1908?

A. I have.

Q. Will you file that as your Exhibit 11?

A. I will.

The paper referred to is marked "R. E. Kimbell Exhibit 11. Said Exhibit is in the words and figures following, to-wit:

For Exhibit eleven, see Volume 8, page 5291.

683 Q. Have you a similar statement relating to the traffic in the State of Arkansas alone?

A. I have.

Q. Will you file that as your Exhibit 12?

A. I will.

The paper referred to is marked "R. E. Kimbell Exhibit 12." Said paper is in the words and figures following, to-wit:

For Exhibit 12, see Volume 8, page 5294.

684 Q. Have you prepared a statement of the formula used in ascertaining the relative cost of conducting State and interstate transportation on the St. Louis Southwestern?

A. I have.

Q. Will you file that as your Exhibit 13?

A. I will.

The paper referred to is marked "R. E. Kimbell Exhibit 13. Said paper is in the words and figures following, to-wit:

For Exhibit 13, see Volume 8, page 5299.

685 Q. Have you prepared a statement of the statistics which relate to and have a bearing upon the traffic for the years mentioned, being the fiscal years ending June 30th, 1907 and 1908?

A. I have.

Q. Will you file that as your Exhibit 14?

A. I will.

The paper referred to is marked "R. E. Kimbell Exhibit 14." Said paper is in the words and figures following, to-wit:

For Exhibit 14, see Volume 8, page 5304.

686 Q. Have you prepared a statement showing the valuation of the property of the St. Louis Southwes ern, its equipment and so forth, in the State of Arkansas, based upon the assessment made of its property in the State of Arkansas, in the year 1908, and will you file that as Exhibit 15 to your testimony?

A. I will.

The paper referred to is marked "R. E. Kimbell Exhibit 15." Said paper is in the words an dfigures following, to-wit:

For Exhibit 15, see Volume 8, page 5306.

687 Q. Mr. Kimbell, will you also prepare*d* a statement of the value of said property based upon the assessment made by the State Tax Commission of the State of Arkansas in the year 1909, and file same as your Exhibit 16?

A. I will.

The paper referred to is marked "R. E. Kimbell Exhibit 16." Said paper is in the words and figures following, to-wit:

For Exhibit 16, see Volume 8, page 5308.

688 Direct examination of R. E. KIMBELL continued.

By Mr. MOORE:

Q. Have you prepared a statement showing the bases used in dividing operating revenues between freight and passenger and between states?

A. I have.

Q. Will you file that as Exhibit 17?

A. I will.

The paper referred to is marked "R. E. Kimbell Exhibit 17."

Said exhibit is in the words and figures following to-wit:

For Exhibit 17, see Volume 8, page 5310.

689 Q. Have you prepared a statement showing the bases for dividing operating expenses common to the entire line, between state accounting divisions, and between freight and passenger?
A. I have.
Q. Will you file that statement as Exhibit 18?
A. I will.

The paper referred to is marked "R. E. Kimbell Exhibit 18."
Said exhibit is in the words and figures following to-wit:

For Exhibit 18, see Volume 8, page 5312.

690 Q. I notice that you filed in connection with the last exhibit, circular number 360. Please explain what connection that has with this exhibit.
A. Circular number 360 contains rules for the guidance of all departments in assigning operating expenses to state accounting divisions, and dividing the same between freight and passenger. Supplement A, to circular 360, defines the bases for dividing common items of expenses between state accounting divisions, and between freight and passenger.
Q. That circular contains the bases upon which those divisions are made, according to the regulations of the Company?
A. Yes sir.
Q. That is issued, I suppose, for the information of those who have these duties to perform?
A. Yes sir.
Q. Now, Mr. Kimbell, I would like you to state how these accounts are kept; make any explanations, and go through and explain these various statements; how they are gotten up.
A. I will say, in a general way, that the accounts of our Company are kept in accord with the rules and classifications of the Interstate Commerce Commission. The Commission does not, however, prescribe or require a division of expenses, between freight and passenger, but this is done by our Company for the purpose of making operating comparisons, and to test in a general way, the efficiency of operation, as to the two classes of traffic. Neither does the Commis*mis*sion require or provide for a division of expenses
691 between states, or of revenue between states. This is done to meet the requirements of State Commissions. Our operating expenses are not divided, in our regular accounts, between state and interstate, but this has been done in the exhibit filed in this case. The revenues, passenger and freight, are divided between state and interstate in our regular accounts, but no effort is made to divide revenues from mail, express and miscellaneous sources, between state and interstate. That is a statement, in a general way, of how our accounts are kept, regularly.
Q. While you made no effort to divide those last items you men-

tioned, which I suppose are grouped under the head of "miscellaneous," mail, express, etc.,——

A. I don't know of any practical basis of dividing the main items of miscellaneous revenue, such as mail, and miscellaneous of various kinds. There is no way that I know of that it could be divided readily.

Q. Mr. Kimbell, will you take these various exhibits, beginning with the first of them, and make any explanations that will be necessary to have us understand?

A. Exhibit 11, which is the statement of operating revenues—operating expenses, taxes, and rentals, in the state of Arkansas, for the year ending June 30, 1908. I think this statement will be found to be self-explanatory. It shows total operating revenues of $4,130,011.45, which total is subdivided between freight
692 revenue, state; freight revenue, interstate; passenger revenue, state; passenger revenue, interstate; and the remaining items grouped under the head of "miscellaneous."

The operating expenses, taxes and rentals, are also shown by the general accounts, as prescribed by the Interstate Commerce Commission, with a further subdivision between freight and passenger. Likewise, taxes and rentals are shown as separate items and subdivided between freight and passenger.

Exhibit 12 follows in sequence.

Mr. MOORE:

Q. I think that explains itself fully on the face of it, does it not?

A. Yes, and I think will be found self-explanatory.

Exhibit 13 shows the formula used in figuring the various ratios of extra cost, under which the results shown in Exhibit 12 were found.

Q. On what bases—going back a moment—were the operating expenses shown on Exhibit 12, divided as between interstate and intrastate?

A. They were divided in the first instance on the straight revenue bases.

Q. Explain in what manner a division was made, as to freight and passenger, in a few words.

A. In the first instance, the revenues are divided between freight and passenger, and the proportion of the revenue derived from the handling of state freight, for example, was found to be 9.79%.
693 Q. 9.79% of what?

A. Of the total freight revenues. This 9.79% was applied to the total operating expenses, taxes and rentals charged to freight business, thereby producing the proportion of that total expense chargeable to intrastate freight. The passenger was determined in the same way.

Q. Now, Exhibit 13, you say shows the formula for ascertaining the extra cost of conducting state or intrastate business, on the

assumption that there is an additional cost of the various percents that are set out in that statement?

A. Yes sir.

Q. Go to Exhibit 14. Is there anything that you wish to say about that?

A. I see nothing there that requires explanation. Exhibits 15 and 16 are the ones to be filed in connection with the valuation. Exhibit 17 defines the bases for dividing revenues between freight and passenger, and is self-explanatory. Likewise Exhibit 18, which defines the bases for dividing expenses between freight and passenger, and between states, and is self-explanatory.

Q. Mr. Kimbell, did the operating officers of the St. Louis Southwestern Railway Company make a test at any time after this litigation was instituted, for the purpose of ascertaining the relative cost of conducting state and interstate transportation? If so, I wish you would state what was done in that respect.

A. A test of that kind was made under my direction.

Q. What period did it cover?

694 A. The month of October, 1908. The temporary injunction was granted in St. Paul on September 3, and the month of October was selected for the purpose of this test, on account of it being the first full month following the injunction. October is rather a heavy month, but for a test of this kind, in my judgment, it fairly represents the general conditions.

Q. Would it represent, fairly, a year's business?

A. I should say so. It would represent relatively, the difference between the two classes of traffic.

Q. I wish you would describe in what way that test was made.

A. We employed special men to ride on every local freight train running in the state of Arkansas, during the month of October; and also stationed men at terminal points; all of these men being provided with special forms on which they were required to make an abstract showing way-bill, reference points from and to, and weight of all freight handled on their train. These reports were accumulated in our Superintendent's office by a representative stationed there, and sent to my office, where the ton miles and other data required, was figured out.

Q. Did they also obtain the weight of the car?

A. They also obtained the tare weight of all cars, loaded and empty; cabooses; gross weight of locomotives in each train. The fuel consumed on each run was reported by each engineer, which was the way we figured it could be most accurately obtained.

695 Q. Was there any record kept of the cost of labor?

A. The wages of train and engine men were obtained from the time slips of each train, and therefore are very accurate.

Q. All the various elements, then, that entered into the cost of moving freight on those trains, was ascertained, was it?

A. I think it was, yes.

Q. Have you prepared any statement showing the result of that test?

A. Yes sir.

Q. If you have, I would be glad to have you file such statement as you have, as Exhibit 19.

The paper referred to is marked "R. E. Kimbell Exhibit 19." Said paper is in the words and figures following, to wit:

For Exhibit 19, see Volume 8, page 5320.

696 Q. Have your prepared any additional statement of statistics that have a bearing upon the information obtained in that test?

A. I have prepared a statement of miscellaneous statistics, in connection with that, which I file as Exhibit 20.

The paper referred to is marked "R. E. Kimbell, Exhibit 20". Said paper is in the words and figures following, to wit:

For Exhibit 20, see Volume 8, page 5322.

697 Q. Did that test enable you to ascertain with exactness, the commercial ton miles made by the different trains, the through and local trains?

A. Yes sir, it did.

Q. And did it give you also the ton miles of dead weight, including the locomotive and caboose, and all cars, including empties, on all trains?

A. It did.

Q. Did it enable you to determine with exactness the cost, wages and fuel?

A. Yes sir.

Q. Mr. Kimbell, I wish you would state what result was shown. State it in your own language.

A. I have memoranda which embraces a good many figures, summarizing these results.

Q. Well, if you have you can just insert that as your statement, if you wish to.

A. In the first place, the results indicate that the cost, commercial ton per mile, for state freight, is .005483, or about 5½ mills; and for interstate, .000991, or a little less than one mill.

Q. You say that it indicates that. Does it indicate that or does it show it for a certainty?

A. Well, I consider that indicate means show.

Q. No there is a difference. What do you mean?

A. The statement shows that. Yes sir.

Q. Well, go on now.

698 A. Some of the important reasons why this——

Q. Does that contain any information as to the relative cost of transportation as between state and interstate?

A. I have just given the figures showing the cost per commercial ton, per mile, on state freight, as compared with the commercial cost per mile on interstate freight, and the difference, according to

those figures, is 5½ times greater for state freight than for interstate freight. Now some of the reasons why this difference appears to exist, are as follows:

First. The average cost on through trains, per train mile, of wages and fuel, was 34¢ and on local trains, 50¢. Of the total state business handled during the month, 22% moved on through trains, and 78% on local trains. The average cost for wages and fuel, per commercial ton mile, was .000865, on through trains; and .003883, on local trains; or, more than four times greater. 78% of all of the state business was handled on local trains, at a cost averaging nearly five times the cost of the remaining 22%, which was carried on through trains; whereas 92% of the interstate business was handled on through trains, at a cost of about one-fifth as much as the cost of the remaining 8%, which was carried on local trains. Owing to the large preponderance of the state business being necessarily carried on the local trains, and the much larger preponderance of interstate business being carried on through trains, the difference in the cost of the two classes of the business is apparent.

699 Second. Through trains cost less per train mile—34¢ against 50¢ for locals, but carry more than three times as many commercial ton miles per mile run, as the local trains, namely, 399 against 129 for locals.

Third. The average number of loaded cars, per train mile, in through trains was 23, or 72% of the total train; and in local trains, 11; or, 69% of the total train.

Fourth. The average number of empty cars per train mile, in through trains, was 9; or 28% of the total train; and in local trains 5; or 31% of the total train.

Fifth. The average number of all cars per train mile, in through trains was 32, and in local trains, 16.

Sixth. The average tons of commercial freight, per ton mile, in through trains, was 399; and in local trains 129.

Seventh. The through trains carried 49 tons of Company freight for each mile run; and the local trains carried 21 tons.

Eighth. The average tons of all dead weight—that is, non-revenue weight, including the weight of the engine, caboose, Company freight and all cars, per train mile was 734 on through trains, and 397 on local trains; the through trains carried more than three times as much commercial business as the local trains, but required less than two times as much dead weight.

Ninth. The average number of ton miles of dead weight, to a ton mile of commercial freight, was on through trains, less than carload, 4.59 tons; carload, 1.62 tons; both, 1.84 tons; and on local trains, less than carload, 9.44; carload, 1.90 tons; both, 4.09 tons.

700 Tenth. The percent of dead weight to gross weight, of through trains was 65%, and local trains 76%.

Eleventh. The percent of overtime to total wages of train and engine men, was 5% on through trains, and 19% on local trains.

Twelfth. The state ton miles of commercial freight amounted

to 5% of the total of all commercial ton miles, but cost over 20% of the total wages and fuel.

Those are some of the important reasons which I have made note of, which in my opinion, seem to indicate where the difference in cost exists.

Q. Was that test made with care and caution, and are you satisfied that the information as obtained was correct and accurate?

A. It was made under my personal direction and every possible care was taken to have it correct.

701 Cross-examination.

By Mr. HILL:

Q. Mr. Kimbell, take exhibit 19, revenue on through trains, $6,794.96. How did you reach that sum?

A. By applying the average revenue per ton per mile, on state freight, in the month of October, as shown in our regular accounts, to the ton miles shown in this statement.

Q. The next item is wages and fuel, $610.96. How did you reach that?

A. You will note that the total wages and fuel for the through train is $23,498.61. That amount was divided between state and interstate freight, on the basis of state and interstate revenue, as indicated by the item just above it. In other words, the revenue basis——

Q. What is the item above it? In other words, you arrived at that on a revenue basis? You have taken the actual costs as far as they go, and then apportioned them upon the revenue basis. That has been your system?

A. Yes; that is it.

Q. Now, a little lower down on that same sheet, Mr. Kimbell—"average cost of wages and fuel per ton mile, greater than interstate, 5.5 times."

A. Yes sir.

Q. Did you reach that on the revenue basis?

A. Exactly.

Q. Mr. Kimbell, your Exhibit 12, so far as the valuations of your property are concerned, are based upon the assess-
702 ments made by the Tax Commission of 1909, are they not?

A. They are, yes sir.

Q. Your entire calculation on the amount of revenue being received by your Company, from its property in the state, is based upon the valuation of that property as made by the Tax Commission in 1909?

A. So far as the valuation is concerned, that is correct.

(Colloquy here ensues regard- use of figures for 1909; whereupon the Master made the following statement:)

The MASTER: I am inclined to be liberal at this time and let the evidence go in, with the understanding that later it may be expunged on the application of counsel, whatever part of it is improper.

Mr. HILL:

Q. Mr. Kimbell, you have not made a detailed statement of your operating expenses, have you?

A. By primary accounts—no, I have not. They are shown, however, by general accounts, you will notice; general Interstate Commerce account, Exhibit 11.

Q. Now, in the Iron Mountain similar exhibit, there are 129 subdivisions of these items, which you have grouped in 5?

A. Yes sir.

Q. You have all the data in your office, that the Iron Mountain has to make up their exhibit, have you not?

703 A. I have.

Q. Can you not make up that?

A. I can.

Q. I would like to have you do it before I cross-examine you then. I feel that I ought to have a full disclosure of these items; to the extent of them and examining the books. There are a great many items I asked Mr. Johnson about, some I am satisfied with and others I am not. Can you get that up, Mr. Kimbell?

A. I will say that that will take me probably a day or so to do. There are 129 accounts and they have to be consolidated by months; that is twelve set of figures——

Q. I think you will be doing well if you do it in two or three days.

A. We can do it very easily, if you want it.

Mr. HILL: I don't believe I will cross-examine Mr. Kimbeil until I get that.

The MASTER: I think Judge Hill should be allowed that privilege.

Mr. HILL: However, there may be some general questions that I can dispose of now.

The MASTER: Examine him as far as you can now, and then recall him later on.

Mr. HILL:

Q. There is one matter I can discuss with you. These statements that you have given in 1908, are for a full year?

A. Yes sir.

Q. The year ending June 30, 1908. The statements that

704 you produced to Judge Vandevanter, upon which you obtained your preliminary injunction, were for the first half of that year.

A. No sir; for the same period exactly. We put in a full year.

Q. How much of that year was affected by the panic?

A. Well, that is very difficult to say. The panic was supposed to have affected us somewhere about November 1907.

Q. You did not begin to feel it until about November, you think?

A. I think not.

Q. You did begin to feel it then very severely, and from that time up until the close of this year 1908, your road was suffering from depression in business, probably, as it never suffered before?

A. Yes, I might add that it affected both classes of business, correspondingly, I should say.

Q. It is a fact that it was suffering?

A. The earnings were somewhat less than for the corresponding months of the previous year, I think.

Q. It was not normal in any respect, state or interstate?

A. Well, I wouldn't say that offhand. I have not had the occasion to look into that.

Q. Your judgment would be that it was?

A. My judgment would be that the earnings were somewhat less than for the corresponding months of the preceding year.

705 Q. I want to read you from the annual report of your road, dated June 30, 1908, page 12: "During the period, July to October, inclusive, there was a substantial increase in operating revenues over the corresponding period of the preceding year; but beginning with November the volume of traffic decreased and the gain previously made was lost, the net result for the year being a decrease of $676,290.00."

A. That is correct; you can't go behind that. I would like to say in that connection that that report is for the entire Cotton Belt system, including the Texas lines.

Q. Now on the next page I read: "The operating expenses for the fiscal year ending June 30, 1908, increased $497,447.70, as compared with the preceding year."

A. Increased?

Q. Yes. Now, as in round figures, a decrease in revenue of almost $700,000 and an increase in expenses of nearly a half million. That is law and gospel?

A. I should say so.

Q. That was hardly a normal year, was it, Mr. Kimbell?

A. Well, I have known conditions like that to exist in previous years.

Q. Did you escape a receiver's hands?

A. By a narrow margin.

Q. If there were many years like that, you would not escape a receiver, would you?

A. We made a fairly good showing at that.

Q. I thought you were making a very bad showing here in Arkansas?

706 A. That was only on state business.

Q. Where do you make your money, Mr. Kimbell?

A. Well, we certainly don't make it, Judge, on state business, I don't think.

Q. Well, I asked you where?

A. Perhaps you know as well as I do, that we make it in the transportation of freight and passenger business.

Q. What kind of transportation and passenger business?

A. All kinds of——

Q. Except state?

A. State business has shown to us as being a losing proposition.

Q. You lost in Missouri, did you not, on state business?

A. Quite likely; yes sir.

Q. You showed that, didn't you?

A. Our case was not tried in Missouri.
Q. You feel sure you are losing on state business in Arkansas?
A. I feel so, from facts I have been able to develop.
Q. How about the state business in Texas?
A. I have never made any test of that.
Q. Do you know anything about Illinois?
A. Well, you can hardly consider us an Illinois line. We operate trackage rights over there.
Q. Your interests there are comparatively small.
A. Very small.
707 Q. What do you think about Missouri business? Do you make money in Missouri?
A. Local business.
Q. Do you on state business?
A. I don't think so, sir.
Q. Then you would have to be making money on interstate business, wouldn't you?
A. Yes sir.
Q. Mr. Kimbell, during the period we are inquiring of, 1908, your road made no dividend, I believe?
A. No sir.
Q. The great drag on your road was the Texas end of it, wasn't it?
A. The Texas end produced a less income than any other part of the line, if that is what you mean.
Q. If you had cut off Texas you would have had a pretty nice income?.
A. I question whether we would have much left. Our income, north of Texas, is due largely to the business we exchange with our Texas line.
Q. You think that is where your money comes in then?
A. The largest part of it, yes.
Q. But the Texas earnings themselves, show much less than the Arkansas?
A. They are very slim.
Q. You had a deficit in Texas, according to your annual report, did you not?
A. We have had deficits in Texas. I presume that is correct for this year.

708 Mr. MOORE:

Q. Mr. Kimbell, are the Texas lines operated by the corporation that is plaintiff in this case?
A. They are absolutely separate corporate Companies, and they are so operated.

Mr. HILL:

Q. Well, this month you made the test in was October 1908, was it?
A. Yes sir; October 1908.
Q. The Commission tariff was then in force, freight tariff?
A. It was.

Q. The two cent passenger rate was then in force?

A. The two cent passenger rate broke in the middle of October, as I remember it; about October 19 the three cent passenger rate took effect. I think I am correct in that.

Q. I thought it went in when the freight tariff went in, November 2.

A. No, it went in in advance of the freight.

Q. Well, then, that month would represent about one-half two cent, and about one-half, three cent rate?

A. Yes; but the passenger rate has no relation to this test.

Q. You made no passenger test during that term?

A. No sir.

Q. Then on your freight test, it was all under the Commission tariff?

A. Yes sir.

Q. Do you think that one month would fairly represent
709 the business of your line for a year?

A. I think for the purpose of a test of that kind, determining the relative difference between the two classes of freight, that one month is perhaps as good as another.

Q. Why did you select October?

A. As explained, it was the first full month after Judge Vandevanter granted the injunction. He granted it in September, September 3; we wanted to make this test as soon as possible, so we selected the first full month.

Q. In your judgment, a test of this kind, made for the month of October, would fairly represent the operation for a year, or for a series of years?

A. I should say so.

Q. Well, do you think that would be affected by the fact that this was after the panic, when the normal condition of affairs was not fairly resumed?

A. I don't understand that the month of October was after the panic.

Q. That was when the panic began.

A. Right along in there we began to feel it.

Q. This was the year after the panic begun.

A. Exactly.

Q. Well, do you think that matters had fairly resumed themselves, so that you could make a fair test of that year?

A. I think so. I believe that under almost any conditions, good times or bad, the relative difference between the two classes of
710 freight would travel uniformly. In other words, if we have poor business, it is going to affect both classes of traffic.

Q. And you think that any one month completely worked up, would fairly represent those conditions?

A. I do; yes sir.

Q. Mr. Kimbell, on this question of miscellaneous earnings. The largest item on that is express—your exhibit 11.

A. Express, yes sir.

Q. Do you think there is any way of separating that so as to determine——

A. It is possible to do that, but it would be entirely in the hands of the express company.

Q. How could you do that? I would like you to explain it.

A. I should say that the way-bills covering the express are quite as susceptible to division between interstate and intrastate, as the way-bills covering freight would be.

Q. That it seems to me would be absolutely true. And with the way-bills covering freight, you can separate it to a mill, can't you?

A. I can.

Q. Have you made any effort to do that?

A. Never, sir. It would not be possible for us to do it. We would have to get the Express Company to do it. We have no detail whatever of the express.

Q. You made no effort whatever?

A. No sir.

Q. How about the mail? That is the next largest item,
711 I believe, is it not?

A. Well, I cannot conceive of any possible way of dividing that between state and interstate.

Q. How are those mail matters handled?

A. They are made by routes. For example, we have a route—our main line extends from Cairo, Illinois, to Texarkana, Texas, and we are allotted a stated compensation per annum.

Q. So much per pound?

A. No, it is determined by the Government and allowed as a stated rate per annum, as a compensation for the use of that road.

Q. That one route from Cairo to Texarkana?

A. Yes sir.

Q. That is your main line?

A. Yes sir.

Q. Of course, that is the heaviest route embraced in this?

A. Exactly.

Q. Do you know of any way it could be separated, on a mileage basis or any other basis?

A. I can't conceive how it would be possible to determine how much of that mail is state mail and how much is interstate mail.

Q. Well, what do you say about the expense of that? Can't you separate that?

A. I know of no way of separating the expenses for mail, express and miscellaneous, excepting the revenue.

712 Q. Well, now, take that route that you are speaking of. How many cars do you put on your trains to carry the mail?

A. That is very apt to vary. Many of the cars are combination, baggage, express and mail cars.

Q. You have a record, though, of every train that goes out, how much of it is devoted to mail; haven't you?

A. It could be obtained; we don't keep it.

Q. Well, it is in your records in some shape or form?

A. No sir; I can't say that it is, only the number of cars that we run on that train.

Q. Can you show what those cars are?

A. How much to mail; how much to express, and how much to baggage, is not shown.

Q. But it could be shown by getting reports on it, without any great difficulty?

A. I suppose so.

Q. On those heavier mail trains, you would probably have one car entirely devoted to mail, would you not?

A. Quite likely; I think that is the case.

Q. In an instance like that you wouldn't have any great difficulty in arriving at the expense of that mail, would you?

A. I should say we would. I don't know what proportion of the maintenance of way, for example, I would charge to that mail car. I don't know what proportion of general expenses I would charge to that car. It would be an exceedingly complex matter.

Q. That is one of the most difficult accounts of all of them to locate, is it not?

713 A. I think so.

Q. Much more difficult than the express account?

A. The express account it would be possible to divide the revenue between state and interstate, but would require a great deal of clerical work to do it.

Q. Well, it requires a great deal of clerical labor to divide your freight between state and interstate, does it not?

A. It does, indeed.

Q. This would not be near so big a job as that?

A. I think it would be bigger. The express business, although in the aggregate it is not as large as the freight, it is made up of very small items.

Q. It would be a big job, all right?

A. It would, indeed.

Q. You have not attempted to handle it though?

A. I never found any occasion for doing so.

Q. Now, the next largest item is what?

A. Switching revenue.

Q. Well, can't you divide that?

A. No sir.

Q. Why?

A. That would not be divisible. When we switch cars for connecting lines we don't know anything about where the car comes from or where it is going to. We are handed a car number and requested to switch a car to an industry located on our tracks. That is the extent of our information. There may be an occasional car of our own that we switch to an industry and charge switching, but those are rare.

714 Q. But you would know of a car coming in, where that car came from?

A. No sir.

Q. Is that what this switching charge is made up of, what you charge other lines?

A. That is switching we have performed for other lines, or possibly for industries.

Q. That is the principal part of it, is it not, switching for industries?

A. Switching to industries is the principal part, but when the switching is performed for another line to that industry, the other line does the paying.

Q. Where do you have that in Arkansas?

A. Pine Bluff, for example. We will have industries on our track; the Iron Mountain will bring freight into Pine Bluff and request our agent to switch a car to Mr. So and So's industry. We have no information regarding where the car comes from.

Q. Now, how do you settle that with the Iron Mountain?

A. They pay us by a switching voucher.

Q. How does the Iron Mountain know whom to charge it to?

A. It is their own freight.

Q. It is collected from somebody?

A. Either collected or absorbed. A great deal of the business they absorb.

Q. Well, if they wanted to collect from an industry, they would have to have a record showing where that car came from?

715 A. They would.

Q. If you used their records jointly with yours, there would be no difficulty in ascertaining it, would there?

A. I suppose we would have difficulty in getting access to another line's records. The question of competition comes in there, and they are not inclined to show their records.

Q. You say you can get that information?

A. I can't say that. We can if the other railroad is willing to give it to us.

Q. Well, that is the point. It is there of record and by seeing their books on that you could get it?

A. It could be gotten.

Q. It is not like this mail proposition?

A. No; mail is absolutely——

Q. Probably between you and the Iron Mountain; if you are competitors you would not want to show it, but when you are developing a lawsuit and questioning them as witnesses, you can get anything from their books, can you not?

A. Well, I don't know; that is probably a legal point——

Q. Well, the only thing that you know of in the way, is that it would require an inspection of their books in connection with your own?

A. Exactly.

Q. But if that is done, you can ascertain the switching charges and locate them between state and interstate?

A. That would require other lines' consent, not only the Iron Mountain.

716 Q. I understand. Q. What is the next item in that?

A. Well, we have special service, train revenue.

Q. What is that?

A. Well, that is very apt to be a circus train. That account is composed of items of that nature, and while I don't know about this particular one, I imagine that is what it is.

Q. Couldn't you divide a circus train between state and interstate?
A. Oh, yes; that could be done.
Q. It has not been done in your calculation?
A. I never had occasion to do it.
Q. Well, what is the next item?
A. Miscellaneous transportation revenue.
Q. What is that?
A. That is made up of such items as a charge for reconsigning cars; stop over privileges; transferring overloaded cars.
Q. Can't that be classified?
A. Yes, we could determine whether that charge was assessed on a state shipment or an interstate shipment.
Q. The next, I see, is about station and train privileges. What about that?
A. Well, that is newspapers, etc., as you probably know, on trains. I can hardly conceive of any way to tell how much fruit and candy a state passenger buys, and how much an interstate man buys.
717 Q. Well, you could locate that on your local trains, couldn't you?
A. No sir; our local trains handle interstate passengers just as they do state passengers.
Q. Your trains are all local, are they not?
A. Well, if you mean we don't run any trains de luxe, I will say yes.
Q. You stop everywhere?
A. I think a few of our trains make a little faster time than others.
Q. But for practical purposes you might call your service all a local service?
A. I think probably so.
Q. Now, this storage of freight, can't that be located?
A. You can tell whether that storage was earned on a state shipment or an interstate.
Q. The same thing is true with the next, baggage?
A. Yes, sir.
Q. Car service is your demurrage, is it not?
A. Yes, and that can be ascertained in the same way.
Q. Rents of buildings and other property?
A. That is an item very much like mail. We would have to divide it arbitrarily in some way.
Q. Just what is in that item, Mr. Kimbell?
A. Well, we will rent a little space occasionally, to the Express Company. We will rent ground to the beer companies to build a beer depot along the right of way. Items of that character.
Q. What about cotton oil mills, compresses, and things of that kind? Do you get a rental from them, that have their
718 facilities along your right of way?
A. I don't know if we have any, but if we had it would go into that account.
Q. Well, "miscellaneous" is your junk shop, I suppose?

A. That is it.

Q. Quite a considerable one in this instance, isn't it, amounted to $10,000 or more?

A. Yes; I don't know just what that is——

Q. Do you know the general character?

A. I will see what the classification provides on it.

I should say that the greater part of that amount was received for detouring trains. As I recall it, the Iron Mountain was washed out in the state of Arkansas, and several trains were detoured from Texarkana to Pine Bluff, over the Cotton Belt. Interstate Commerce account number 19, provides that revenue from that source shall be put in the miscellaneous.

Q. It would be right difficult to locate between state and interstate, wouldn't it?

A. It would, indeed; yes sir.

Q. Do you know of any other large item that would enter into this account?

A. I was just looking over the classification here and I don't see another item that I think is in that account. I imagine that covers the whole business.

Mr. HILL: I believe that that is as far as I can go with Mr. Kimbell until I get a detailed statement.

719 Redirect examination.

By Mr. MOORE:

Q. Mr. Kimbell, when did the panic of 1907-08 begin to have its effect on the railroads?

A. I should say in November, 1907.

Q. Well, when did the effect of the panic—when was it fully felt by the railroads?

A. It began to be felt during the month of November, and I should say it increased in its intensity from month to month and was felt very severely in February or March.

Q. Was it not at its height in the spring, in March?

A. I think so.

Q. It began, then, in November?

A. Yes sir.

Q. Is it true that the effect of it was felt severely in November, or did it come on later, the severity of it?

A. I can only testify from memory of the situation, and not from——

Q. I want your best impression in regard to that; whether it was felt severely in November, or began to be felt in the spring.

A. My impression is that it did not begin to be seriously felt until the early part of 1908.

Q. The reason I ask you is, Judge Hill asked you if it was severely felt in November, and you stated it was, and I wanted to know, whether you understood his question.

720 A. I expect I should have qualified that, because I think that is where it commenced, in November.

Q. And it became severely felt and was perhaps at its height later on, in the spring of the next year?

A. Yes sir.

Q. Mr. Kimbell, referring to that paragraph of the 17th annual report of the St. Louis Southwestern Railway Company, to which your attention was called, on page 12: "During the period, July to October, inclusive, there was a substantial increase in operating revenues over the corresponding period of the preceding year; but beginning with November the volume of traffic decreased and the gain previously made was lost".

Now, I want you to state, taking the period of six months ending December 31, 1907, and taking into consideration the gain that accrued from July to October; and considering also any loss that may have accrued from the panic (which you say began to be felt in November of that year), I want you to state the character of that period; how the business of that period compared with the corresponding part of the previous years—three, four or fives years.

(Witness examines papers.)

Mr. Kimbell, will you state what the gross earnings of the St. Louis Southwestern Railway system was for the last half of the year 1907?

A. $5,435,028.77.

Q. Now, I wish you would state what it was for the last half of the five preceding years; that is, the four preceding years. I want to cover a period of five years; 1906, 1905, 1904 and

721 1903.

A. The last half of 1906 was, $5,341,985.89. The last half of 1905 was, 4,594,748.99. The last half of 1904 was, 4,753,-032.78. The last half of 1903 was, $4,064,853.19.

Q. The gross earnings for the last half of the year 1907, were larger than they were for any of the other five years, of which that year is the last, were they not?

A. Yes sir.

Q. What were the earnings for the last half of the year 1908?

A. $5,530,815.00.

Q. What were the earnings in the first half of each year from 1908, going back for a period of five years?

A. The first half of 1908 was, $4,163,235.09; 1907, 5,211,149.17; 1906, 4,394,815.31; 1905, 4,107,198.69; 1904, 3,584,632.15; 1903, 3,415,084.95.

Q. Now, state the first half of 1909, while you are at it.

A. $4,801,074.25, for the first half of 1909.

Q. Mr. Kimbell, what does page 58 of the annual report of the St. Louis Southwestern Railway, referred to, show to have been the earnings in the month of November 1907?

A. $875,623.75.

Q. What was it in November 1906?

A. $945,387.83.

Q. What was it in 1905?

A. November 1905, $820,439.02.

722 Q. What was it in 1904?

A. $846,771.37.

Q. And the year preceding that, 1903?
A. November 1903, $771,412.59.
Q. What were the earnings in October of 1907?
A. $1,034,671.76.
Q. What were they in October of 1906?
A. $985,419.24.
Q. What were they in October 1908?
A. $1,011,323.69.

Q. Mr. Kimbell, page 14 of the report read by counsel, your attention was called to a statement of the total operating expenses for the fiscal year ending June 30, 1908—increase $497,447.00. Does that apply to the St. Louis Southwestern Railway in Missouri and Arkansas alone, or to the entire system?

A. It applies to the entire system.
Q. Operating in Missouri, Arkansas, Illinois——
A. Illinois, Missouri, Arkansas, Louisiana and Texas.

Q. Mr. Kimbell, was there any increase in material and wages along about that time?

A. I think there has been a gradual increase in material and wages for some years.
Q. Would that enter into the increased expenses to any extent?
A. That would have the effect of increasing the cost of operation.

723 Q. And is that increase in wages and material still operative and effective, and is it still continuing?

A. I don't know of any decrease. It seems to be all increase.

Q. Your report also states that $331,970.00 of that increase represents charges of depreciation of equipment, made during the current fiscal year, in compliance with the rules of the Interstate Commerce Commission. Was there any charge in the previous year for that?

A. There was not.
Q. Why not?

A. The rules of the Interstate Commerce Commission, promulgated and effective July 1, 1907, provided for a charge for depreciation of equipment. Prior to that time no charge of that character was made.

Q. Was that character of charge made for the year 1908?
A. Yes sir.
Q. State what was charged on that account for that year.

A. Well, there are several amounts here that have to be added together. The year ending June 30, 1908, there was a charge of $331,970.69 for depreciation on the several classes of equipment.

Q. Now, state if there was any charge, and if so, what, for the year ending June 30, 1909.

A. The year ending June 30, 1909, was $331,360.08, charged to depreciation of the various classes of equipment.

Q. Mr. Kimbell, that increase referred to in that report
724 grows very largely out of that charge, does it not; that increase in expense?

A. Yes, that comprises apparently the greater part of the increase.

Q. Is that a permanent increase that will have to be carried hereafter, under the regulations of the Interstate Commerce Commission?

A. Yes sir.

Q. Mr. Kimbell, speaking of the test you made for October 1908, did I understand you to state that that test was based upon an ascertainment of the relative cost in the various percentages of service that was involved in transacting the two classes of business—that is, it was intrastate and interstate?

A. That is freight only.

Q. I said nothing about passenger. I say the two classes of business, interstate and intrastate freight.

A. Yes sir.

Q. That, then, developed the actual expenses of each one and therefore the relative expense as between them?

A. I think so.

Q. Now, would the ratio be affected or changed, by a change in the prosperity of the business of the road; would it depend upon whether the business was light or whether it was large?

A. I would say that the relative proportion of state and interstate traffic would travel uniformly, whether business was
725 up or down.

Q. Mr. Kimbell, you state that if you could get possession of the way-bills of the express company, you might be able to separate express business which you have charged to "miscellaneous" as between state and interstate. Could you do that without obtaining the way-bills?

A. It couldn't be done without an inspection of the way-bills.

Q. Have you any control over the way-bills?

A. Absolutely none.

Q. Would the express company be liable to entrust you with their way bills for that purpose, or do the service for you?

A. Oh, yes; they would certainly do it, under our contract.

Q. How are mail, baggage and express carried; are they carried in combination cars, or in separate cars?

A. On the St. Louis Southwestern Railway I expect the greater portion of it is carried in combination cars.

Q. What effect would that have upon your ability to separate either revenue or expense?

A. Under no conditions could we separate the revenue from mail, between state and interstate. I can't conceive of any possible basis for doing that.

Q. How in regard to the expenses, Mr. Kimbell?

A. The expenses might be arbitrarily set aside on some basis. It would be purely arbitrary, however.

726 Q. I don't mean arbitrarily. I mean upon the facts in relation to and connection with the service rendered; how would it be in regard to dividing the expense? Is there any basis attainable, except by assuming an arbitrary one?

A. I should say that it would be a very difficult proposition to get anything like a fair basis for that purpose.

Q. Can you think now, and can you state any basis upon which you would arrive at an actual division; I don't mean an arbitrary, but an actual division, based upon the differences—the differences in the cost?

A. We might ascertain what proportion of the space of a car was devoted to the handling of mail, baggage and express, but after we have obtained that, I don't see how it would be fair to use those proportions to determine the relative expense. There are no doubt other elements entering in there that would make that unfair.

Q. For instance, in a combination car; that is partly passenger car, is it not?

A. Yes, we have some combination cars.

Q. And partly baggage?

A. Yes; partly baggage, express and mail.

Q. The Company handles its baggage?

A. Yes sir.

Q. And it employs a porter, or a man in the passenger part of the car, does it not?

A. Yes.

Q. Does it handle the express or mail, or have anything to do with it, except to allow it to be taken into and put out of

727 this car?

A. In some trains the mail is in the custody of the joint baggage man.

Q. How about express matter?

A. Likewise express matter.

Q. Don't the express company carry an agent?

A. Not on all trains; there are joint men on the smaller runs.

Q. How about the larger runs?

A. On the larger runs there is usually a mail clerk, but as a general thing there is a combinat' baggage and express man, who handles both the Company baggage and the express business.

Q. How is the compensation for the service in carrying mail ascertained?

A. It is fixed by mail routes, by the United States Government.

Q. How are you paid?

A. Quarterly.

Q. How is the amount to be paid ascertained, by weight?

A. The Government makes the tests, I think, every four years.

Q. Does it pay by weight?

A. Yes sir.

Q. Is there any distinction between state and interstate mails?

A. Absolutely none that I ever heard of.

728 Recross-examination.

By HILL:

Q. Mr. Kimbell, I understood you to say in answer to the question by Mr. Moore, about this division of expenses that you made for the

month of October 1908, that you had made an actual division of the expenses. You don't mean you made an actual division of all the expenses?

A. Only the principal train expenses, wages and fuel.

Q. Wages and fuel?

A. Yes sir.

Q. And you only made that; that is as far as your division went, as to those two items?

A. Yes sir.

Q. And then you divided those on a revenue basis, after you get the actual expenses on those two?

A. Yes sir.

Q. Now, on this question of combination of agents for mail and express, and baggage; when one fellow acts in that two-fold capacity, he is paid by the different Companies, is he not?

A. Usually.

Q. Do you know what proportion they pay him?

A. It is very apt to vary on every run.

Q. Generally in proportion to the business——

A. There is no part of it, I might say, paid by the United States Government, for handling mails; that is included in their general compensation.

729 Q. What I had in mind was between the baggage and express.

A. Yes sir; that is divided on a contract basis.

Q. About how is that divided, do you know, as a matter of fact?

A. As near as the service for each class of business has justified.

Q. How do you get at that division?

A. It is purely arbitrary, and made satisfactory to both Companies. For instance, we can have a man running on the Stutgart branch; the Railroad Company will agree with the Express Company that they will pay one-half and the Express Company one-half.

Q. Both parties will have some idea of what that——

A. I suppose so; I don't know what they——

Mr. MOORE:

Q. You don't know anything about it?

A. It is usually on the basis of the service.

Mr. HILL:

Q. That is frequently done?

A. There is quite a little of that, for economical purposes.

Q. I understood you to say to Mr. Moore, in explaining these statements of increased cost, that there had been no decrease up to the present time, so far as you knew?

A. Well, in connection with what was that?

730 Mr. MOORE: With the cost of material and service wages.

A. Oh, I made a general statement; that is my impression, that there has been a general increase in wages and cost of material. So far as I am aware, there has been no material decrease in either.

Mr. HILL:

Q. I want to read you from the law and gospel—1909, page 13: "From the foregoing it will be noted that while the expenditures for maintenance of the property were considerably in excess of those for the preceding year, the transportation expenses were considerably less, notwithstanding the substantial increase in the volume and the revenue derived therefrom."

So there has been some decrease, anyhow, has there not?

A. That might be due to greater efficiency in operation.

Q. Have you been getting a lot of more efficient men, or have you all been getting more efficient as time went on?

A. There might be a number of reasons for that, better explained by an operating man who is running the road.

Q. When Mr. Moore was questioning you about some basis to divide mail and express, particularly express, I believe, between state and interstate, you said that it might be possible on express to get some arbitrary basis to divide it. None that would be accurate?

A. I don't think I said that as regards express.

Q. What do you say about express?

A. I say what I said in answer to your question, that it would be obtainable if we had access to——

731 Q. I am speaking of the expenses.

A. Then I reiterate that it would have to be some arbitrary basis.

Q. Is not the revenue basis an arbitrary one?

A. Yes sir.

Q. It is just a judgment then, of yourself and other experts, as to which is the best arbitrary basis, is it not?

A. I can say in that connection that I am not posing as an expert; but I will say in answer to your question, that I don't know of any other basis which could be reasonably used.

Q. But this one is necessarily an arbitrary basis?

A. Yes sir.

Q. I wish you would explain this depreciation matter in this respect: after you charge off to operating expenses a given per cent of depreciation, under the rules of the Interstate Commerce Commission, that is credited to reserve account, is it not?

A. Yes sir.

Q. Then what becomes of an engine that is broken up and thrown away?

A. It is subject to replacement and charged to that reserve account.

Q. After that goes to the reserve account it is not charged off to depreciation any more, or operating expenses?

A. The depreciation account sets up a reserve fund which

732 is utilized for the purpose of replacing equipment; that, in substance, is what the depreciation account amounts to.

Q. Before you had that depreciation account, what did you do with your wornout engines, depreciation, and things of that kind?

A. We were compelled to issue bonds, as a general thing, when

we wanted new equipment. It is a scientific deduction laid down by the Interstate Commerce Commission, which seems to me to be pretty sound.

Q. It is just another way of book-keeping——

A. In this way the traffic is made to bear what it should bear, the depreciation on the property. Prior to that it did not bear that.

Q. It should have been charged off heretofore just as it is being charged off now?

A. I think it is customary to do that in industrial and other concerns, but not in railroads, prior to July 1, 1907.

Q. This rule just places in effect a good business principle?

A. It seems so to me.

Q. That loss is going on all the time and this just makes it appear upon the books of the company.

A. It must be provided for.

Mr. MOORE:

Q. And that change in the method of book-keeping, and from issuing bonds, and charging to reserve, is what accounts for
733 a large proportion of the increase of expenses, is it not?

A. It does.

734 Cross-examination of the witness F. P. JOHNSON continued as follows:

By Mr. HILL:

Q. Mr. Johnson, you were to ascertain the status of the Little Rock Junction Company for us.

A. The Little Rock Junction Railroad extends from Argenta Junction to a connection with the Little Rock, Mississippi River and Texas Railway Company, and is .9 miles east of Little Rock Depot.

The Little Rock Junction Railway is leased to the St. Louis, Iron Mountain & Southern Railway under a rental of $26,100 per annum.

Now, that $26,000 is the interest on its mortgage at six per cent. That is what you wanted to know?

Q. I believe you did not know that when I inquired the other day, and you find that is what it is—interest on its mortgage?

A. Yes, sir. That line is used for freight traffic only. The rental charge is merged with the other rental items and divided between freight and passenger expenses in our statistics.

735 Q. That is a mistake, isn't it, Mr. Johnson?

A. Well, I don't know. I believe that items of that kind should be treated broadly, and any change we might make in that particular item would not make very much in the final result.

Q. We are not figuring on the effect of it, but figuring on just how it should be.

A. If you are going to analyze every dollar of rentals, perhaps that $26,000 could be charged back to the freight traffic.

Q. Is not that in effect a double charge of six per cent there? You are making a calculation seeking to obtain six per cent interest

or seven per cent or eight per cent, as the case may be, upon your property; and, yet, this property is already giving six per cent charged off as "rentals."

A. Well, I don't know that that is a double charge. We are assessed $100,000 by the Arkansas Railroad Commission, or the Arkansas Taxing Board, for the value of the Baring Cross Bridge.

Q. That is a part of the property of this Little Rock Junction Railway?

A. Yes, sir, it is a part of the property of the Little Rock Junction Railway. Now, whether that rental charge we pay,—the contract as I remember it requires us to pay all of the taxes upon that bridge, as a part of the rentals.

Q. That corporation, the Little Rock Junction Railway is paying no taxes, other than what the Iron Mountain pays, is it?

736 A. Not that I know of. We are paying its taxes, under our contract.

Q. You operate the property?

A. Yes, sir.

Q. And you maintain it?

A. Yes, sir.

Q. In view of that fact, when you are seeking to get 6% interest on your investment in this suit, is not that a double charge so far as this property is concerned?

A. I do not know that it could be considered a double charge. In fact, I did not know the $100,000 was in this statement.

Q. After looking into it, Mr. Johnson, are not you convinced that is a mistake?

A. I think the $100,000 should be eliminated from the value of our property.

Q. You think there should be eliminated $200,000, double on that assessment?

A. (After examining statement.) It is $162,740, instead of $100,000.

Q. It would be double that amount?

A. The double of that amount would be what I should think should be eliminated from this statement Exhibit 7.

Q. Give the total figures there.

A. The $162,740 is the assessment levied by the Taxing Board. Twice that amount would be $325,480.

Q. I believe you stated that the charge of that rental

737 should be against freight traffic and not against freight and passenger?

A. If you are going to analyze every item of rental, perhaps that should be a charge. I believe those rentals should be treated broadly.

Q. Just what do you mean by "treated broadly," Mr. Johnson?

A. Take your entire net amount for rentals, divide that between the freight and the passenger service. Because any track of that kind that we rent or that we secure trackage rights over, in a general way affects both the freight and the passenger business of the state.

Q. But when you come to divide the freight and passenger business, you cannot sustain that broad classification, can you?

A. I think you can on the rental charge.

Q. Take up the Paragould trackage: it is 34 miles, isn't it, if I remember it correctly, that you lease from the Cotton Belt Railway?

A. Yes, sir.

Q. Is not that used exclusively for interstate freight?

A. Yes, sir.

Q. You are not permitted to do any local business on that trackage, are you?

A. No, sir.

Q. Do you think it is right to charge that to your intra-
738 state freight charges in Arkansas?

A. Yes, sir. That rental charge is included in our total amount and is also divided between freight and passenger as well.

Q. Didn't you tell me the other day it was charged only to freight?

A. The operating expenses. The maintenance of that line is charged to freight. That is, the service is a freight train expense and is charged to freight in our expenses. But the rental charge is merged in one amount and the net amount paid for rental and taxes is divided between freight and passenger service and between state and interstate business.

That Cotton Belt track is practically a double line, and when we secure the privilege to operate over the Cotton Belt to Paragould and to the state line and north of that, it benefits our main line from Texarkana to St. Louis, to the extent that it gives us more use for other than through freight business.

Q. If you have any double trackage arrangement from state line to the City of St. Louis, it would benefit your business also, wouldn't it?

A. In Missouri? Yes, sir.

Q. Would not it benefit your Arkansas business, too?

A. I do not say any double track in the country would particularly benefit the state business of Arkansas.

Q. Would it not give you better facilities to carry it right up from Arkansas to St. Louis?

739 A. Provided that track extended into Arkansas, yes.

Q. That is what I intended to ask: if that double trackage was continued clear up to St. Louis, would it not be incidentally a benefit to Arkansas?

A. Yes, sir. It is, practically.

Q. But you charge only that part in Arkansas to Arkansas?

A. That is all, yes, sir.

Q. As I understand you it is used exclusively for interstate traffic and while you have it charged to state and interstate so far as operating expenses are concerned and so far as rental is concerned you have it charged to state and interstate, passenger and freight traffic?

A. Yes, sir.

Q. Do you think that is right?

A. I do.

Q. Tell us about the Van Buren Bridge: have you looked into that any further?

A. Yes, sir. We have a contract with the St. Louis & San Francisco Railroad Company for trackage rights over the Van Buren Bridge. Now that contract expires in 1916, and it requires us to pay trackage at the following rates.

We pay for locomotives	$2.00
For fr-ight cars	1.50
For passenger cars	2.00

With a minimum charge of $1,000 per month. That is, we are compelled to pay $1,000 a month regardless of the volume of
740 the business handled over that bridge. If the business figured at the rates I have just mentioned, amounts to more than $1,000 a month, those rates would apply on all excess business.

Q. Those rates are applicable only where if they have been applied they ran over $1,000 a month?

A. Yes, sir. Now, that charge of $1,000 a month is made to operating expenses and rentals, and the basis is authorized by the owning line. That is, in rendering a bill against the Iron Mountain Railway for the use of that bridge, the St. Louis & San Francisco Railway will show on that bill how that amount is credited upon their books; and we are compelled to make the corresponding charge on our books. That is by arrangement of the Interstate Commerce Commission.

That $1,000 in the month of October, 1907, was divided as follows:

General expenses	166.66
Maintenance of way & structures	$5.00
Transportation expenses	164.00
Rentals	624.34

That makes $1,000.

Q. That is used exclusively for passengers, isn't it?

A. Yes, sir. We have one passenger train each way, daily.

Q. You run no freight trains over it at all?

A. No, sir.

741 Q. Would your rental charge, by the car and locomotive charge, amount to $1,000 a month with two passenger trains per day?

A. No, sir, I do not believe it exceeded $1,000 a month but twice. Some special arrangement we have there, that required an additional rental.

Q. I don't think I made my question clear, Mr. Johnson. It is this: If you did not have that minimum of $1,000, would the service of that bridge amount to $1,000 a month, at the fixed rate of $2 for locomotives and $2 for passenger cars?

A. No, sir, the service we have received from that bridge has

never amounted to $1,000 a month. We are compelled to pay the minimum, by the contract.

Q. This minimum you are really paying all the time, instead of the car and locomotive rates?

A. Yes, sir, that is right.

Q. Do you think that is proper, to charge a proportion of that to the freight business?

A. Yes, sir, in line with the other rentals we have.

We have not attempted to divide our rent at all between the freight and passenger service, based upon the actual facilities we rent; any more than we attempt to divide our taxes.

Q. What is the attitude of the Fort Smith Suburban Railway?

742 A. The Fort Smith Suburban Railway, so far as I can find out, is intended to be a belt line out of Fort Smith, Arkansas; and is not included in the track mileage of the Iron Mountain and no trains of the Iron Mountain Railway operates over it. It is possible we may run a switch engine there.

Q. The point I wanted to get at is, are you charging any part of the operation of that road in the operation expenses of the St. Louis, Iron Mountain & Southern Railway?

A. We are not operating it. If we run a switch engine over it, for any purpose, we would, of course, charge that into the operating expenses of the Iron Mountain road.

Q. There is some use made of it. I have seen trains run over it myself.

A. If there is any expense, it is in all probability in our central division. But my understanding is, that the Suburban Railway itself is not complete, and for that reason they are not operating it.

Q. My information is they are running a train a day on it.

A. The Iron Mountain?

Q. I don't know. But somebody is running it and that is what I was wanting you to indicate, who was running that and the expense of running it. I am satisfied there is no revenue from it, of any moment.

A. The expense if any would be incidental, and would undoubtedly be in our expenses, if we have any engine there. But
743 we have no train schedule there.

Q. And you have not any revenue from it?

A. No, sir, if there is any revenue from it it would be in the Iron Mountain revenue.

Q. But you have not found it?

A. No, sir, I have not found any.

Q. You found neither revenue nor expenses?

A. No, sir.

Q. I asked you about the river line at Little Rock.

A. That .82 miles between our main line just north of the Little Rock Union Depot connects with our Little Rock Mississippi River and Texas line just south of the connection with the Little Rock Junction road. It is a connecting line between the two divisions. That is not a leased line covered by any rental. That is part of

our own track. It is merely a sub-division in this track mileage statement, because it was built as a separate track and not a continuation of any of the main line.

Q. It is used generally?

A. Yes, sir.

Q. Mr. Johnson, I asked you to get up data about the industrial agent and the foreign agents: have you done so?

A. Yes, sir. The amount charged to "outside Agency" for immigration and industrial bureaus for the six months ending Dec. 31, 1901, amounted to $2,802.50.

Q. Where are your immigration agents located?

744 A. Our immigration and industrial agents are both located in the City of St. Louis. They cover the entire territory and are constantly on the road, as I understand it.

Q. You have commercial agents located at various commercial centers throughout the country?

A. Yes, sir.

Q. And your immigration agency is only in St. Louis?

A. That is their headquarters. The men employed in those bureaus are on the road all the time. Their territory is the entire system. So is the commercial agent's territory the entire system.

Q. But they are located in different points?

A. They are located in different points, yes, sir.

Q. The immigration agent, is he the one you call the industrial agent?

A. We have two. We have what we call an "immigration and industrial bureau," but we have separate officials in charge of each.

Q. And that is handled here at St. Louis?

A. Yes, sir.

Q. Where are your commercial agents located: have you a list of them?

A. Do you want me to read a list of them?

A. Give me a reference to that and I will find it, without encumbering the record with the list.

A. You will find it in our official list of stations and

745 agents: there are perhaps 50 of them.

You wanted to know what our miscellaneous account No. 12 consisted of.

Q. Yes, give us that now, please, Mr. Johnson.

A. That includes amounts we received from the renting of space for automatic vending machines in the stations. Those machines are placed in the stations and the Railroad Company receives a commission. That commission is collected by each of our agents and remitted to the general office.

We also receive a commission for the use of space for weighing and name plate machines; and from the sale of newspapers, magazines, and fruit at stations and upon trains.

Q. You might call that the "catch-penny" account?

A. Yes, sir. Now the payment from the Van Noy News Company for the privilege of selling newspapers and periodicals on our trains is paid for in a lump sum, $30,000 a year.

Q. That is for the entire system?

A. Yes, sir. And 45¢ per month per mile of road in addition to the mileage in force when this contract was made. That is, if we increase our mileage they increase their payment to us at the rate 45¢ per mile per month.

Now that is a general monthly charge, and we have no means of telling how much was made in Arkansas or how much was made on state or interstate business.

Q. And you separate that on the revenue basis?

A. Yes, sir, and make no attempt to divide that between state and interstate.

746 Nor to divide it between passenger and freight?

A. Yes, sir. We have divided the total revenue on that account between passenger and freight, on the revenue basis.

Q. And have not attempted any actual division of it other than that?

A. No, sir, that is all.

Q. Mr. Johnson, all that privilege you sell to the Van Noy News Company is a privilege on passenger trains, isn't it?

A. Yes, sir, and at stations. Not only on passenger trains but at stations.

Q. That includes the stations as well as the trains?

A. Yes, sir.

Q. How do you divide that between passenger and freight?

A. We divide that between the freight passenger service on the basis of the actual freight and the actual passenger revenue in the state.

Q. Ought any part of that be credited to freight revenue?

A. I think so. I think any revenue——

Q. It is not derived from the freight service in any way at all, is it?

A. I think any revenue we may get that is to be credited to that account through the privileges we rent at stations might be earned by reason of the freight business just as well as by reason of the passenger business.

747 Q. Isn't this privilege from its very nature, such that its profit is made out of passengers and traveling public, and not from the freight?

A. So far as the station is concerned, it is made from the people who patronize the stations.

Q. That is in passenger stations. It is all in the passenger stations?

A. I would say that the shippers of freight would patronize those stations in connection with their freight business. It is not altogether from large stations but it is received from all parts of our system. I can readily conceive that the automatic vending machines would be patronized through our freight as well as our passenger business.

Q. Are your freight and passenger stations usually joint or are they separate?

A. They are usually a combination station except at large points, like Little Rock, Pine Bluff and Fort Smith.

Q. At all your large points you have separate freight and passenger stations?

A. Yes, sir. But the great majority of our stations are combination stations.

Q. But necessarily it would be a very small proportion of that amount from the freight business, wouldn't it?

A. It is a very small item, anyway.

Q. It makes no difference how small the item is, I am asking about the proportion.

A. I cannot say.

748 Q. How about the trains?

A. Practically all that revenue we receive from trains would be earned from the passenger service.

Q. But you do not credit it to the passenger service?

A. No, sir, we divide it between freight and passenger service.

Q. On a revenue basis?

A. Yes, sir, on a revenue basis.

Q. Mr. Johnson, you were to get up the miscellaneous rents, weren't you?

A. No, sir, I believe I stated the other day that Mr. Wharton's men were analyzing the miscellaneous rents. I have seen their exhibit of it.

Q. You have been working on that jointly, haven't you?

A. Yes, sir.

Q. You haven't that?

A. No, sir.

Q. Except the legal expenses, is there any data I asked you about that you have not mentioned?

A. That is all I know of, and I have gone through the testimony to find out.

Mr. HILL: The legal expenses, Mr. Moore, I wish to look over before questioning Mr. Johnson further.

Mr. MOORE: That is all right.

749 Cross-examination of F. P. JOHNSON, continued.

By Mr. HILL:

Q. Mr. Johnson, in your legal expenses I see several items of payments to Leake & Henry, of Dallas, Texas; and to S. R. Fisher, of Austin, Texas: I do not recall the exact words, and I will ask you if you remember those vouchers, and I want you to explain what that service was for.

A. Leake & Henry represent the St. Louis Iron Mountain & Southern in connection with any suits that may be brought in the State of Texas. The expenses of the firm of Leake & Henry are charged to the entire St. Louis Iron Mountain & Southern System. We cannot charge it to the State of Texas, because we have no trackage there.

Now, it may be that is in connection with the expense of a suit for loss and damage, where a shipment originated in Texas. But Arkansas is charged with only a proportion of the expenses of Leake & Henry, based upon the gross earnings in the State of Arkansas as compared with the entire earnings of the Iron Mountain Railway.

Q. There will be a proportion of the amounts paid Leake & Henry charged to the intrastate traffic of Arkansas?

A. Yes sir, a small proportion.

750 Q. Have their services been incurred in any way in regard to the intrastate traffic of Arkansas?

A. Well, I cannot say that, unless I could see each individual suit.

Q. They have not tried any cases in Arkansas, have they?

A. They would not try any cases in the Arkansas courts, no sir.

Q. It is a service that is connected wholly with the interstate shipments, isn't it?

A. Well, I should say that perhaps most of it was. But they represent us in the state of Texas. They would handle any business we might have; and if it is possible, as was suggested by you some time ago, that suits could be brought in Texas on account of an Arkansas loss or damage, just as they can in Louisiana, then Leake & Henry would handle that suit.

Q. I believe you made answer to that, that it would be charged to Arkansas and not to Texas?

A. In that event it would.

Q. So if there was an Arkansas suit brought in Texas, all the expense of that would be charged to Arkansas?

A. Yes sir.

Q. And if a Texas suit was brought in Arkansas, that would be charged to Texas?

A. We cannot charge it to Texas, because we have no mileage in Texas.

Q. I am using that as an illustration, of course. I mean, if you had any mileage there.

751 A. Yes sir.

Q. The Iron Mountain has no corporation in Texas?

A. I think not. I cannot answer that question positively.

Q. How could you be sued if you have no mileage there, no road there, and no corporation?

A. We might have traffic originating in Texas and delivered to our line at Texarkana, and the Iron Mountain would be made a party to that suit.

Q. How would they get service on the Iron Mountain, if it is not there?

A. That I cannot answer.

Q. Isn't it a fact that these are suits to which the Texas & Pacific Railroad is a party?

A. No sir. Any business that Leake & Henry would handle for the Texas & Pacific would be billed against the Texas & Pacific, and we would have nothing to do with it at all.

Q. I cannot quite understand, Mr. Johnson, how you can charge any part of their services to the intrastate traffic. I can understand how you might charge it to the interstate traffic in Arkansas, but I cannot understand how you could charge it to the intrastate traffic; will you give me your ideas a little more fully on that?

A. Leake & Henry represent the St. Louis Iron Mountain & Southern Railway in connection with any business we might have in the Texas courts. It is possible—I do not know that it is so,
752 but it is possible they may have handled suits there in connection with what might be purely intrastate. It may be a small part of the total business.

Leake & Henry are not salaried attorneys. They get a fee for each case they handle.

Q. Will you look over the vouchers embraced in this six months' period, paid to Leake & Henry—there are not many of them—and answer us at the next sitting, or whenever it is convenient, as to whether they were paid for services in any suit that originated in Arkansas?

A. Yes sir.

Q. And let us know just what these matters were for?

A. Yes sir.

Q. Now, what about Mr. S. R. Fisher, of Austin, Texas?

A. I don't remember him at all. That must be a very small amount and it must be for some special cases.

Q. I think there are two or three items here, but I wish you would look him up at the same time you do the others. I notice one of the vouchers is numbered 2001; I think there are two or three for him here in this six months' period. Find out the nature of that.

A. Yes sir.

Q. I find here some Memphis lawyers, McFarland & Canada. They are on your regular pay roll at $200.00 a month, I believe, for every month during this period. They are your regular attorneys at Memphis, aren't they?

A. Yes sir.

753 Q. Their work is confined to Memphis, isn't it?

A. It is confined to Tennessee, yes sir.

Q. But you have charged a proportion of their salaries to the intrastate traffic of Arkansas: is that right?

A. Yes sir.

Q. In the month of November 1907, I find that you have paid judgments, in the case of the State of Arkansas vs. the St. Louis Iron Mountain & Southern Railway in fines, for a violation of the law against furnishing free transportation to legislaturs, of something over $10,000—or, $10,000 plus the court costs; that is correct, isn't it?

A. Yes sir.

Q. That was for a violation of the statutes, to which the Railroad Company pleaded guilty, wasn't it?

A. Yes sir, that is the way the account reads.

Q. I find charged up to the legal expenses salary of $200.00 per month, of T. L. Cox: do you know Mr. Cox?

A. No sir.

Q. Do you know whether he is a lawyer or not?

A. I haven't any idea. I never met him. The voucher itself reads "For services rendered to the law department."

Q. Did you pay that under authority of the general officers?

A. The voucher is approved by the head of the legal department.

Q. That charge runs all through this six months' period
754 we have been investigating, I believe?

A. Yes sir, that is his monthly salary.

Q. I find in your general expenses a charge for W. H. Phelps, assistant to the Vice-President, a monthly charge of $499.50. I presume that is $500.00 salary, less 50¢ for the hospital fund?

A. Yes sir.

Q. I see that $128.22 of that is charged to the Iron Mountain in Arkansas: is that correct?

A. A proportion of that is charged to the Iron Mountain in Arkansas. I do not know just what the amount is.

Q. Do you know what services Mr. Phelps renders in Arkansas?

A. I do not.

Q. Do you know Mr. Phelps?

A. I know him when I see him but I do not know him personally.

Q. Do you know what his occupation is?

A. He is a lawyer.

Q. Do you know of his having any legal business for the road in Arkansas?

A. I do not know anything about what service he performs.

Q. That, like these other vouchers, is paid under the direction of these other officials?

A. That is his title, assistant to the Vice-President, and his voucher is approved by the Vice-President.

755 Q. I see Mr. J. M. Seibert is included in the legal expenses in Missouri, and a part of that is charged to Arkansas. I find Mr. Seibert has a salary of $250.00 per month as Commissioner of Statistics in the legal department, of which $110.33 is charged to the St. Louis Iron Mountain & Southern in Arkansas: is that right?

A. That is his salary, and a proportion of that would be charged to Arkansas. I cannot identify the amount.

Q. What are Mr. Seibert's dtuies as Commissioner of Statistics?

A. I don't know. He is an employé of the general offices and of the law department.

Q. What service does he render in the State of Arkansas? Do you know?

A. I haven't the slightest idea.

Q. I notice in looking at the expenses of the general offices, that Mr. Schuyler, the auditor, gets a general salary of $10,000 per annum, I believe; that is divided up, a part to the St. Louis Iron Mountain & Southern, and a part to the other roads. A part of that seems to be paid by the Western Coal & Mining Company: is that a fact?

A. Yes sir, $90.00 of it, I think, is billed against the Western Coal & Mining Company, per month.

Q. Do you know whether any part of his salary is paid by the Arkansas Central Railroad?

A. No part of it is paid by the Arkansas Central Railroad.

756 Q. Didn't you state the other day you were under the impression that some of these smaller roads are paying part of his salary?

A. They are.

Q. Which ones?

A. The Arkansas Midland Railroad is paying part of it.

Q. I thought it was the Arkansas Central. Do you know whether any other road is paying part of his salary?

A. I would not answer positively whether there are any others or not. Mr. Schuyler has nothing to do with the Arkansas Central, as general auditor of that road.

Q. It reports to the general auditor, doesn't it?

A. It sends a report into our office, but it has an accounting department of its own.

Q. Mr. Johnson, I notice in these itemized accounts of the expenses of the legal department quite a number of items for transcripts of your cases to the Supreme Court, printing of briefs, payment of witnesses, and various other proper legal expenses, that are carried into the general legal expense account. I understood from you the other day that all of these damage suits and liabilities of the road in various ways, are localized, charged off to the proper locality, and to the proper department. But that would not include these various items that are paid you might say, preliminary to the payment of the judgments, would it?

A. No sir. Such expenses as the cost of the transcript in a case, we consider as an incidental expense of the law department,

757 and charge it as such. Now the charges in a damage suit would be charged to the transportation department, if incurred by trains; or if incurred in the maintenance of way department it would be charged to that department.

Q. And it may be that quite a large amount of money had been paid on that particular suit before then, and charged up to "General expenses"?

A. Such expenses as you have just mentioned, yes.

Q. The result of that would be that you charge off all these various accounts to the different departments; isn't it an absolutely accurate amount that is charged there?

A. You mean the amount we charge to the various departments would not always represent the total expense in connection with that particular suit?

Q. Yes.

A. No sir.

Q. That would really be, in a way, but an approximation of it?

A. That is all that is intended to be charged on that account, if that is what you mean. That transcript, for instance, is provided for by the Interstate Commerce Commission's classification, and should be charged to "law department expenses."

Q. I am not questioning the correctness of these, Mr. Johnson. I think it is entirely correct. But the point is whether you charge it off to various departments, like "maintenance of way" and so on;

that is really not an actual amount that you have charged to
758 that account, because there have been previous expenses on that account which have been paid in another account?

A. I don't understand that question, nor could I give an answer that would make it clear.

Q. Suppose you had a personal injury suit and before it went to judgment you had expended $1,000, that had gone in to your general legal expenses, and you had to pay $10,000 judgment?

A. I cannot imagine such a case, where the preliminary expenses would be $1,000.

Q. I find one item down here, in one matter, of $700 and odd dollars, so I don't suppose that is very badly off. Use that as an illustration.

A. What is the nature of that particular item?

Q. Voucher 1618, Tom N. Mahaffey, money expended on legal services, $771.52—which I understand from the voucher embraces various matters like payment for witnesses, lost time for witnesses, etc., all proper and legitimate expenses.

A. That may be several cases.

Q. I don't know about that. Use that as an illustration. Or, take $1,000 and $10, if you please.

A. If we had $1,000 preliminary expenses in connection with any suit, that would be a preliminary expense of the law department, and it would be charged to the law department; and the transportation department, or the maintenance of way department, or any department that might be responsible for that damage would never be charged with that amount.

759 Q. That is the point. It would be charged only with the final payment?

A. Yes sir, and the court costs incident to that payment.

Q. That would all be included in the last voucher, I suppose, wouldn't it?

A. Yes sir.

Q. I notice in the legal department for Western Arkansas, the salaries paid to Mr. Miles and his various office assistants, are divided, I presume, between Arkansas and Oklahoma. Do you know on what basis that is divided?

A. That would be divided on the basis of the earnings on the lines in his territory in the State of Arkansas, as compared with the lines in his territory in the State of Oklahoma.

Q. Are you certain of that, Mr. Johnson? I think they are divided on a mileage basis. I will ask you to look at some of these vouchers. You might be able to tell us about that.

A. I will look it up, but that is my impression of the way it is handled.

Q. It seems to be a fixed division between them.

A. It would be on a fixed division basis. When I say on the "basis of earnings," I do not mean the percentage would change every month. We would use the earnings of this quarter for a division of the expenses for the next three months to come. Those percentages are changed each three months.

760 Q. I did not notice very carefully, but it seems to be on the percentage throughout.

A. I will look that up and will let you know later.

Q. I see an item in your "rental account" that has been analyzed, showing the buildings and elevator at Little Rock as leased to Mr. Bunch for $1.00 per year. Is that right?

A. That is my understanding. That is the "miscellaneous rental account" number 18.

Q. Do you know what that property is worth?

A. No sir.

Q. Do you know how it is carried in the assessment?

A. No sir.

Q. Is it included in the right of way?

A. No sir, I haven't any idea. They don't list that property on their assessments. They give us just the buildings.

Q. The Bunch elevator is on the right of way, is it not?

A. Yes sir, I believe it is, and that is the rental for it.

Q. Did you find any rental for the hotel at Little Rock, the Union Station Hotel?

A. No sir, I did not look for it. I turned over all of the papers to Mr. Hamilton and his assistants, in connection with that, and I understand that they looked for it.

Q. You get $1.00 a year out of that, don't you?

A. It would be there if we did. It might be in some other
761 period. I don't know what the rental is.

Q. I wish you would find out about it. Our information is that, like the elevator, it is $1.00 a year. I refer to the Pratt Hotel, the Union Station Hotel at Little Rock. Please find out what is included in what is rented to him. I don't know whether that bar there and those various catch penny rentals, all go to him or go to the Railroad. I would like to know about that. Also, who keeps up the maintenance of that Hotel. If you are not familiar with it, I can say that it is a hotel and union station, together.

A. If it is an annual, or a semi-annual rental, it might appear in the first six months of that calendar year.

Q. It seems the eating-house at Texarkana is rented to Mr. Pratt for $75.00 per month. I would like to know what the eating-house part of the station at Little Rock is rented to him for.

A. I will ascertain that.

Q. I notice the $200.00 item of salary of Mr. Cox is not all paid by the St. Louis Iron Mountain & Southern, but $190.70 of that is charged to the Iron Mountain, out of that salary of $200.00. Who pays the other part of his $200.00 salary?

A. Well, all of the subsidiary lines of the Iron Mountain in the State of Arkansas.

Q. Do the Missouri lines pay any part of that?

A. No, that is an Arkansas expense.

Q. That would be apportioned to the Arkansas Central—
762 A. Not to the Arkansas Central. The Arkansas Central has nothing to do with the accounts of the St. Louis, Iron Mountain & Southern Railway. We do not operate it.

Q. Well, it would be apportioned to the Arkansas Midland?

A. Yes sir, and to the Arkansas & Louisiana Railway; the Mississppi River, Hamburg & Western Railway, and the Brinkley, Helena & Indian Bay Railroad.

Mr. HILL: I haven't had a chance to examine all these rentals and when we get the others, we may want to ask Mr. Johnson some other questions about rentals, but this is all I wish to ask him just now.

763 Redirect examination.

By Mr. MOORE:

Q. You stated that the Arkansas Midland Railway pays a part of Mr. Schuyler's salary.

A. Yes, sir, that is my impression. My impression now is that Mr. Schuyler's salary is apportioned between all those subsidiary lines. There is a distinction between some of the subsidiary lines and others. For instance, the accounts of the Arkansas & Louisiana, or the Arkansas Midland, or the Brinkley, Helena & Indian Bay are entered in our office; but not those of the Arkansas Central, nor the Little Rock, Hot Springs & Western. Those are all kept in accounting departments of their own and all we get is a monthly statement of their expenses, submitted to our office simply as a record.

Q. For those lines, as I understand you, the accounts are kept in the Auditor's office, and they contribute to the payment of his salary?

A. I think that is the way it is handled.

Q. And the other lines whose accounts are kept by their own organization and which do not pass through the accounting department of The St. Louis, Iron Mountain & Southern Railway do not participate in that expense?

A. I think not. I will look that up.

Q. Mr. Johnson what is the character of service that the switching revenue accrues from?

A. There are several items in there, but the principal item is the switching we collect as a direct charge on an intermediate haul,
764 where we might make deliveries say at Little Rock from some road; or a shipment from some road delivered to us to be delivered to an industry located on our line.

Q. Is there a large proportion of that accruing out of switching done for other lines?

A. I say, the principal part of that is perhaps for such switching as that.

Q. You stated on your cross-examination that you thought those items could be located: I want you to state how that could be done and if there is any way it would be practicable to do that. In other words, if your statement then made is correct.

A. No, sir, that statement is not correct. Where we control the shipment and the way bill, we could then determine whether that charge was either a state or an interstate charge. But where we perform merely the intermediate haul, we would have no record of

our own to indicate whether it was a state or an interstate shipment. That is, we would have no record to indicate where that shipment originated.

Q. That would be true whether it was being transported to an industry or handled in some other way over a connecting line?

A. That is right. As long as the shipment did not originate on our line then our record would not be complete in that respect.

Q. When you said you thought it could be located, you referred to the switching done to traffic that had originated on your own lines, did you?

A. Yes, sir.

Q. But that would not apply to switching done on other
765 lines or covering traffic that did not originate on your line?

A. That is right.

Q. Item 115 in statement 4 to exhibit 3, "foreign agencies" is the salary and expenses of representatives of the railroads in the State of Arkansas and elsewhere, whose business it is to look after the commercial interests of the Company and build up, encourage and promote immigration and the location of industries in the State: am I correct about that?

A. That expense is included in account No. 115, yes, sir.

Q. You were asked if any part of that account was properly chargeable to intrastate expenses: I want to ask you if it is true that the results of the labor of those agencies is confined in its effect to interstate business.

A. Not at all, in my opinion.

Q. They do what they can to promote business in the country or district of the country in which they are located, don't they?

A. The business of the industrial and immigration bureaus is to build up the country in the States through which our line passes. Now it is the business of the commercial agent, whose expense is included in that account, to secure traffic to and from all points in the States through which our road passes. In my opinion the service they perform is just as much a benefit to the intrastate traffic as it is to the interstate traffic.

Q. I wish you would explain in what way it is a benefit to the intrastate traffic.

A. The industrial and immigation bureaus in seeking for in-
dustries and in building up the country in Arkansas, un-
766 doubtedly develops for us a larger intrastate traffic. Not only that, but the business that is secured by the commercial agent, that may be going into the State of Arkansas, is a traffic that is eventually distributed from the various distributing points in the State as intrastate traffic. And it is just as fair a charge to the State business, especially when you take into consideration that only a portion of that is charged to the State traffic, as any other expense of a general nature would be.

Under our system there is not but 13% of that $54,000.00 that is charged to intrastate traffic.

Q. I was going to ask you what proportion was charged to intrastate traffic.

A. 13.08%.

Q. Your attention was called on cross-examination to the fact that the earnings from freight under the statement filed by you in this case, appeared to be for the last half of the year 1907, about 2% less than the earnings from the same source during the first half of that year, and a difference of about 4% in the passenger earnings; the earnings for the first half of the year being about that much larger than those for the last half:

I want to ask you if that difference in the freight earnings is an unusual fluctuation.

A. I would not say it was. The increase or decrease may vary in any six months period, and a 2% variation would not be abnormal.

Q. Isn't it always the case that it does fluctuate one way or the other?

A. Yes, sir.

767 Q. Have you ever known of a case where the earnings for two different periods of a fiscal or a calendar year would be exactly the same?

A. No, sir, and as I explained at the time, the earnings for the first half of the calendar year 1907 were unusually large.

Q. I believe you stated that the passenger rate of 3 cents was in force during the first half of the year, up to the middle or the latter part of April.

A. Yes, sir.

Q. And during the rest of the year the passenger rate was two cents?

A. Yes, sir.

Q. That would naturally affect the earnings very materially wouldn't it?

A. Yes, sir, that would account to a large extent for the increase in percentages on the passenger business during that first half as compared with the last half of the year.

Q. I want to call your attention now to statements 3 and 4 attached to exhibit 3: I will take up first some items in statement No. 4:

Your attention was called to item No. 6 "ballast" as to which it appears that 70% of the expenses incurred during this six months covered by this statement accrued in Arkansas. I believe you stated on examination that that was based on the actual expenditures in that State on that account.

A. Yes, sir.

Q. Mr. Johnson I find among other items on there, in which there is a very much lower percentage, some lower than

768 50%:

I want you to state whether the items that enter into expenses fluctuate constantly or whether they remain stationary. I

mean items that enter into the maintenance of the track and equipment and expenses of that character.

A. I should say that all of the items in maintenance of way and structures, with the exception perhaps of "superintendence" are very apt to fluctuate from month to month in any six months period.

Q. Isn't it true, Mr. Johnson, that you could not take any two six months periods, covering the same part of the year, and find uniformity in expenditures of that character?

A. I do not believe you could, in any year.

Q. And isn't it also true that some items will be larger in any given period and other items will be smaller, growing out of the exigencies that might arise during any given period: is that true or not?

A. Yes, sir, that is true.

Q. I observe in connection with the item referred to, "rails" during that period is 20% in Arkansas as compared with the total; that, I take it, accrued out of the conditions that existed during that period.

A. Undoubtedly so.

Q. At other periods it might be—and isn't it very likely that would be so, and the "ballast" account charged to Arkansas would be lower?

A. Yes, sir.

769 Q. The next item I see there is "cross-ties:" Arkansas bears 63% of the total cost of cross ties for that year?

A. Yes, sir.

Q. That same thing is true there, isn't it?

A. Yes, sir.

Q. The next item is "track appliances" of which 45% is charged to Arkansas.

The next item is "railway tools" of which 46% is charged to Arkansas.

The other is for "road-way maintenance" 43%.

Now, what do those variations indicate, Mr. Johnson?

A. It indicates to my mind the needs of the track at that particular time and the fact that while our total expense for ballast was $31,000.00 and we charged 70% of that to the State of Arkansas, it merely indicates that out of the expense for ballasting during the particular period, the majority of the work was required in the State of Arkansas.

On the other hand, in our other road-way maintenance, miscellaneous repairs to track, but 43% of the total amount we expended upon the entire line was required in the State of Arkansas.

That condition might be entirely different in the next six months, or it might have been entirely different in the previous six months. But the item of expense itself is of a local nature and what we spend in one State would be no indication of the requirements of another locality.

Q. You stated awhile ago that these expenses in all their several

branches are continuously fluctuating, according to the needs
770 of the locality in which they are made: now you will find in some cases a large proportion chargeable to, we will say the State of Arkansas, and in another a very small proportion: I want you to state whether tha' evens itself up in the long run, and whether it is abnormal to say that 70% of the ballast is charged to Arkansas for that period? Does that show any abnormal condition or is that the result of the variations that occur in the fluctuations in the different items that constitute this expense account.

A. If I understand the question right, the ballast account itself does not indicate the general charge to the State of Arkansas. By that I mean that while we have charged 70% of our total ballast expense to the State; and but 43% of our other right-of-way maintenance to the State, the average charge upon all those accounts to the State of Arkansas for the six months is a fairly normal charge.

And perhaps the best unit to judge that charge would be the track miles. This statement shows that the total charge for all maintenance accounts during this period was 54%, as against a track mileage of 52%, located in the State.

Statement No. 3 attached to that exhibit shows that 52% of all the track miles of The St. Louis, Iron Mountain & Southern Railway are located in Arkansas.

Q. That is the first item of the second paragraph?

A. Yes, sir, it is the first item, in the statement of "various statistics."

Now that 54% is not an abnormal charge for maintenance
771 of 52% of our mileage.

Q. The point to which I more particularly wanted to call your attention by the last question was, whether the fact that one, two or half a dozen or more of the items embraced in the 129 items in this account happened during this particular peroid to appear to be large disturbs the balance of the account as it runs along from year to year.

A. No, sir, because items of that kind that fluctuate, are *are* almost negligible compared to the total maintenance expenses of a Railroad.

Q. And isn't it true that while a given item may be high one year it would be low another; and likewise an item that might be low one year would be high another?

A. Yes, sir.

Q. And aren't they continually changing and isn't it practically impossible to find any period of six months in which all the items would be high or in which all of the items would be low?

A. I do not think you could find any such period, or any period in which the items would be absolutely uniform.

Q. You have also stated that this ratio of 54% of the cost of maintenance of way and structures bears a close relationship to the track mileage in the State of Arkansas——

A. I might say it bears a still closer relationship to the train mileage.

Q. I was just going to ask you about that. What is the train mileage?

A. The train mileage is 54%. In other words, 54% of all the train miles upon The St. Louis, Iron Mountain & Southern Railway were made in the State of Arkansas.

772 Q. Now Mr. Johnson how does that ratio of cost of maintenance of way and structures compare with that of maintenance of equipment?

A. It is within 1% of it. The percentage of maintenance of equipment charged to the State of Arkansas is 55% of the total expense on The St. Louis, Iron Mountain & Southern Railway for maintenance of equipment.

Q. How does the total expense compare?

A. The total operating expense (on the last page) show- that 54% of all the operating expenses of the St. Louis, Iron Mountain & Southern Railway were charged to the State of Arkansas.

Q. Those charges, as far as can be, are based upon the actual expenditures, or the actual facts in connection with the expenditures, are they?

A. Yes sir, so far as possible they are the actual expenses incurred in the State.

Q. There is one item of "flood damage" on that account: Please turn to that.

A. Account No. 107 covers flood damage $3,210.20, charged to The St. Louis, Iron Mountain & Southern Railway, of which 92% was chargeable to Arkansas.

Q. Are you sufficiently familiar with the condition of the country in which the line is located, in Arkansas and Missouri, to state to what extent, the line is exposed to flood damage in Arkansas as compared with Missouri.

A. Generally speaking I would say, from what I have learned of conditions in Arkansas as compared with Oklahoma and Missouri, that the chances are that our expenses on that account would

773 be a good deal larger in Arkansas than in any other State for the St. Louis, Iron Mountain & Southern Railway.

Q. You are not familiar, however, with the physical conditions down there?

A. No sir I am not familiar with the physical conditions I do know that our expenses in Arkansas for this account has always been larger than it has for other States.

Q. I wish you would turn to your exhibit No. 6. The first division that appears on the first sheet of that exhibit, under the head of "total track mileage operated" and followed by a statement of the earnings and revenue, shows the various items under the head of "United States" "group 8" and "St. Louis, Iron Mountain & Southern" and "St. Louis, Iron Mountain & Southern in the State of Arkansas." Then it contains percentages under each column.

Now I want you to take the total passenger revenue in the United States, as stated on the first line, 564,606/343, and immediately under that the per cent that is of the total revenue stated, 21.81. I want you to state if in that column and each of the three columns to the right of it, the percentages given mean the percentage of all the

revenue derived from the territory that is covered by that particular column? For instance, under "United States" appears 21.81%. That represents that portion of the revenue that accrues from operation of the railroads of the entire United States, doesn't it?

A. Yes sir.

Q. And that is true all the way through, isn't it?

A. Yes sir.

Q. For instance, the freight revenue earned by the rail-
774 roads in the United States is 70.44% of the total revenue earned in the country?

A. Yes sir.

Q. And in the state of Arkansas it is 71.51% of the revenue earned in the State of Arkansas?

A. Yes sir.

Q. And the one preceding that, 72.06% is the ratio of the freight earnings to the total lines of the St. Louis, Iron Mountain & Southern Railway?

A. Yes sir.

Q. Your attention was called to the fact that the percentage of expenses to earnings is larger in the State of Arkansas than in group 8, referred to in this exhibit, there being nearly $9.00 in the $100.00 difference, I believe. I wish you would state if there is any reason to account for that, Mr. Johnson.

A. I think the principal reason is that it costs more to operate on the St. Louis, Iron Mountain & Southern and on that line in the State of Arkansas, than it does upon all of the lines in group 8. That is due, to a great extent, to the density of traffic on our line in the State of Arkansas as compared to the average density of traffic on the entire line.

Q. How does the density of traffic affect the ratio of expenses to earnings?

A. The density of the passenger traffic in group 8, for instance, is 72,000 miles.

In the freight business the density of traffic is 553,000 miles.

On our line in Arkansas the density of passenger traffic is
775 54,000 as against 72,000 in group 8.

And in freight it is 487,000 as against 553,000.

To my mind that would show the reason why the cost upon our line is greater than the percentage of cost of group 8. We have got to maintain our organization and it is going to cost so much to do it. It is going to cost us so much to run the trains and conduct the business, whether we have a great volume of business or a small volume of business. And the greater that volume of business the smaller the percentage of earnings to expenses is bound to be.

Q. How does the ratio of expenses to earnings on the St. Louis, Iron Mountain & Southern in the State of Arkansas compare with the entire line, as shown on that exhibit?

A. The percentage of expenses to earnings from the entire Iron Mountain is 74.24%. On that part of the Iron Mountain in the State of Arkansas it is 73.88%.

Q. How does the density of traffic compare, both as to passenger and freight, as to these two parts of the line?

A. The density of passenger traffic is about 11% greater in the State of Arkansas than it is upon the line as a whole; and there is a difference of about 3%. That is, the State of Arkansas is 3% greater in freight than it is upon the Iron Mountain as a whole.

Q. 11% greater for passenger and 3% greater for freight?

A. Yes sir. I think the passenger rate would have some bearing upon that as well. The average revenue from passenger is smaller in the State of Arkansas than it was during that period on all of the lines in group 8 for the entire period we show in this exhibit.

776 Q. What states comprise group 8? You stated that the other day, but I believe you desired to correct that.

A. I would like to make that correction. Group 8 is comprised of the States of Arkansas, Oklahoma, Kansas, part of Missouri, South of the Missouri River, and parts of Texas, Colorado and New Mexico.

Q. You were asked I think on cross examination something in regard to the division of miscellaneaus expenses. I believe the mail and express are the largest items included in that: now what would be necessary in order to make a division of the express business as between State and Interstate?

A. In order to divide our express earnings between state and interstate we would have to have the original way bill or a certified copy of it, one of the two. The way bill itself is the only record I know of that would indicate the points of origin and the point of destination of the express. Those way bills are in the possession of the Express Company.

Q. They are of course prepared by them and for them?

A. Yes sir by their agents and clerks.

Q. Has the Railroad access to them for any other purpose than perhaps to verify accounts furnished them by the Express Company?

A. Not to my knowledge. We have no record of them in our office at all.

Q. You would have to obtain any information there from them by going to the office of the Express Co.?

A. Yes sir.

Q. Would that be practicable, Mr. Johnson?

777 A. I dont' believe it would. It would require on the part of the railroads almost as large a force in the Express Company's office as they have in their own office, for the handling of their own freight bills. I do not believe it would be practicable at all. It would be impossible for us to get this information from the Express Companies because the expense would be entirely too great upon them.

Q. How is mail handled and what is the method by which the Railroad Company is compensated by the Government for carrying it; and by whom are the regualtions for the controlling of the United States mail, prescribed: just state in a general way what you know in regard to that.

A. The lines of The St. Louis, Iron Mountain & Southern Railway are divided into various mail routes and our compensation depends altogether on the volume of the mail handled over that particular route for certain periods. By that I mean that at certain

periods the United States Government weighs the mail and fixes the compensation to be paid to the Railroad Companies based upon the amount of mail handled and the facilities furnished.

Q. Is that done at stated periods or at irregular periods?

A. It is done I believe once in every four years.

Q. Does that rate of compensation fixed in that way continue in force for four years?

A. When the mail is weighed I don't believe that rate would remain constantly in force for four years. There may be a change in conditions that would change the rate. But the Government itself controls the mail and fixes the compensation.

778 Q. Does the Government prescribe the car space that is to be furnished by the Railroad Company for the accommodation of the mail?

A. That is my understanding.

Q. Isn't it a fact, Mr. Johnson, that when they fix the compensation, based upon weight, that that compensation continues for a period of four years, but in the meantime if the Government desires to have the Railroad Company enlarge the space, and should direct the Railway Company to furnish it, it makes an addition to this compensation on account of that enlargement of space?

A. That is what I meant by saying that a change of conditions might bring about a change in compensation.

Q. What service is rendered by the Railroads in connection with the mail? For instance, who delivers it to the officials and to the Government agencies at the various stations, or are you familiar with that service?

A. Where the volume of business justifies it, the Railroad Company will maintain a mail clerk, whose business it will be to deliver the mail from the train to the post office. That is one of the facilities we are compelled to furnish in the mail service.

Q. Are you required to carry the mail clerks of the United States in connection with the mail?

A. Yes sir.

Q. Are you paid a separate compensation for that service?

A. I don't know whether there is any special compensation or not; or whether that is all embodied in the rate we are paid for that particular service.

Q. You do not know anything about that?

A. No sir.

779 Q. Is there any requirement made on the part of the United States Government in regard to furnishing mail cars, and the manner of lighting and heating them?

A. Their contract would specify the general conditions under which that car is to be kept and maintained.

Q. In other words, the Railroad Company is required to furnish and heat and light the mail cars?

A. Yes sir, furnish and properly light and heat—in other words, properly equip it for use.

Q. Is there any requirement, Mr. Johnson, in the regulations of the Government about handling the mail, as to how cars shall be

placed to render them accessible to the agents of the Government at stations in Cities? Have you any knowledge as to that?

A. No sir I have no knowledge as to that.

Q. I will ask you, Mr. Johnson, if from your knowledge of the character of the service required in connection with the United States mail it does not differ in many respects from the ordinary service rendered in the carrying of freight and other classes of traffic.

A. I do not believe I understand the question.

(Previous question read to the witness.)

I should think the service rendered was of an entirely different nature from the service rendered to passengers or freight. That is an operating question that could be a good deal better answered by an operating man. I am not familiar with the operating conditions of that particular service.

780 Recross examination.

By Mr. HILL:

Q. Mr. Johnson there was one question I could have asked you before and I forgot it.

Do you think that fine of $10,000.00 in those cases of violating the law is a proper charge against operating expenses?

A. I don't know where else it would go. It is an incidental expense and I know of no other place you could put it.

Q. Do you think that is an operating expense?

A. It is an expense that is undoubtedly incurred in the operation of the railroad. You cannot charge it to "Capital account" and I don't know where else you would, put it.

Q. Ought not it be charged against surplus or profit and loss account?

A. I hardly think so.

Q. Your judgment as an accountant would be that a fine against a railroad for violating the law should properly go into operating expenses?

A. Yes sir.

Q. Speaking of the different percentages of cost of maintenance of way, you call attention to the fact that the percentage charged against Arkansas in this exhibit was 2% more than it would be if charged on a track mile division, and but little different if charged on a train mile basis: do you think the track mile or the train mile division would be the proper division of those maintenance of

781 way expenses.

A. I did not say 2%.

Q. You said one was 52% and the other was 54%.

A. I said it was 2% in excess of the track mileage.

Q. Didn't you say that the track mileage basis would be a good way of dividing it?

A. No sir I said that would be a good indication of the expenses that we had set up.

Q. What relation would there be?

A. Taking the track mile and the train mile together, it ought to

indicate, in a general way, the cost of maintaining that track. That is, if we have 50% of the entire track in any one State and 50% of the entire train mileage in any one State, I believe the operation expenses for maintaining of track ought to be somewhere in the same neighborhood. I would not say it should be arbitrarily divided that way, because the volume of business over that track would have a good deal to do with it.

Q. You do think they should bear an approximate realtion to each other: is that the idea?

A. I think so, yes sir.

Q. But on both those percentages Arkansas has something the worst of it, hasn't it?

A. No sir. The train mileage per cent and the maintenance per cent are identical, 54% in both cases. While the track mileage is 52%.

Q. But the track mileage would give Arkansas the worst
782 of it.

A. The volume of business over that track would have some bearing on the expense, of course. But I think the two of them are perhaps the most important factors in considering maintenance cost.

Q. Would the number of train miles be a good indication of the use of the track?

A. Yes sir, I think it would be some indication of the use of it.

Q. Wouldn't it have a very decided influence on it?

A. Yes sir, I should say so.

Q. Wouldn't that be a fair way to arrive at the division?

A. I would not divide a total charge for maintenance of way and structures to any particular portion of the track, if there was any way of getting at the actual expense—if that is what you mean.

Q. I am speaking of those that might not be located definitely.

A. Where you have a common account, that could not be divided on any other basis, I think train mileage is indicative of the cost.

Q. Wherever it can be located, you locate it.

A. Yes sir.

Q. And when you are not able to locate it, like the Superintendent's salary, say, then the train mileage would be the next best method of division?

A. I don't think the train mileage would be the best division for the Superintendent's salary.

Q. What would be?

783 A. Superintendence of Maintenance of Way has nothing to do with the train running, in itself.

Q. I took that at hap hazard, as a general expense. You select one.

A. He has absolute control of the track. We have used this train mileage basis in dividing all our maintenance of way expenses, as between freight and passenger, as being the best unit we could get.

Q. Have you any personal knowledge of the influence which these foreign agencies would have on the intrastate traffic of Arkansas?

A. Any personal knowledge?

Q. Yes.

A. No sir.

Q. Your answers to Mr. Moore's question along that line were based on general knowledge and not any specific knowledge of these particular items, we-n't they?

A. Yes sir. That is just my opinion.

Q. You don't know of a pound of freight they have ever caused to be moved from one point in Arkansas to another point in Arkansas, do you?

A. No sir, and I don't know of a pound of freight they have caused to be moved into the State of Arkansas. I don't know anything about the specific nature of their work.

Q. Do you know the general effect of their work on the traffic?

A. It is their business to solicit freight traffic, and it is
784 their activity that accounts for a good deal of the revenue of the Company.

Q. As to the industrial agents the same is true: you are not speaking of the effect of their work, but rather, of what their work tends to do?

A. Yes sir.

Q. Neither the industrial agent nor the foreign agent has anything to do with non-competitive business, has he?

A. The industrial agent has nothing to do with the traffic at all; nor has the immigration agent; I mean by that, they are not soliciting traffic.

Q. They are not soliciting non-competitive traffic?

A. No sir, nor competitive traffic.

Q. The industrial agent is supposed to solicit immigration that might go to Oklahoma or to Texas if it would not go to Arkansas?

A. To locate there, rather than to solicit the passengers themselves.

Q. The incidental benefit to the railroad and to the country would be to get them to travel over the line of the road, and to ship freight over them.

A. That is not their purpose. Their purpose is to get them to locate there.

Q. So as to produce the revenue for the Railroad Company?

A. Not by reason of their coming there so much as what they will produce after they are located in the State.

Q. "Laying up treasures in Heaven"—so to speak.

785 A. Or, rather, in the State of Arkansas.

Q. Now about the foreign agents: they do not solicit traffic between non-competitive points, do they?

A. I would not say a foreign agent was actually soliciting intrastate business, but I do say that in soliciting business and getting the movement into the State, his activity undoubetdly brings about an intrastate movement.

Q. What class of business are these foreign agents supposed to influence?

A. Anything they can get to go into the State.

Q. The movement of freight into the State over their line rather than over some competing line: is that the idea?

A. Yes sir.

Q. If there is a shipment to be made to Little Rock, it would be the place of that agent to try to get it over your line rather than to have it go over the Rock Island?

A. Yes sir.

Q. After it would get into Little Rock and that freight would be shipped out to Morrillton or Conway or other points on your line, would the foreign agent have any effect on that?

A. On its being shipped out of Little Rock?

Q. Yes.

A. No sir. But one of his duties might be, and one of his efforts might be, in the line of getting that business into Little Rock rather than into Memphis, provided we got the longest haul by taking it to Little Rock.

786 Q. That would be selling the goods instead of carrying freight, wouldn't it?

A. Oh no. It is the business of our commercial and soliciting agents to solicit all the business they can get.

Q. Unless the goods were sold in Little Rock he could not move them over his line into Little Rock. He would not sell them in Little Rock rather than Memphis, would he?

A. I am inclined to think he gets a great deal of business by soliciting it to go to Little Rock rather than to some other point and by developing the industries of Little Rock.

The influence of these outside agencies is perhaps directly assigned to the interstate traffic, but I believe we are perfectly justified in charging a proportion of that expense to the intrastate business.

Q. I have not quite understood yet how he could influence that shipment into Little Rock instead of Memphis. As I understood it, there would not be any freight to move until there was a sale of the goods, to be moved there into Little Rock. How could he influence the shipment of goods there instead of to Memphis? I do not understand your reasoning on that.

A. If we can get a manufacturer in Chicago, who has been delivering most of his wares and confining most of his trade to the St. Louis territory, to enlarge his business and go into foreign territory, or go into new territory, and select the State of Arkansas as a field for his business, we would then be delivering a much larger

787 business over the Iron Mountain, because originally most of his shipments would be to the City of St. Louis, if we could influence him to open up his trade and bring his freight to Little Rock.

Q. He would have to have an agent at Little Rock wouldn't he?

A. Yes sir, but it is the business of the commercial agent to keep in touch with that manufacturer and urge him to get him to go into Arkansas.

Q. I asked you if he was engaged in trying to sell goods in Arkansas.

A. He is engaged in doing anything he can to influence the shipment of goods into Arkansas.

Q. Do you think those commercial agents go into the market to

try to sell the goods to some manufacturer, shipper or dealer in Little Rock?

A. I have heard those commercial agents say they had succeeded in having such and such a concern extend their territory to certain points on our line. And I have heard them say they had succeeded in getting certain commercial houses to open up a branch house at certain points on our line. All that business tends to develop intrastate business in Arkansas just as well as the interstate business.

Q. On the theory that after they get in there there would be other intrastate movement?

A. Yes, sir, after they got in there, there would be developed other intrastate business.

788 Q. And does that indirect and subsequent movement justify you in charging this against the intrastate business; is that your idea?

A. It justifies charging some of it.

Q. You have charged the same per cent of it as you have the other?

A. 13%.

Q. According to the revenue?

A. Yes sir.

Q. You think 13% would be a fair division of this particular item?

A. I think it would.

Redirect examination.

By Mr. MOORE:

Q. Are these foreign agencies maintained by nearly all the large lines of railroad?

A. Yes sir.

Q. And you say their duty is to work up all kinds of business that will develop the country and the traffic of the roads they represent?

A. To develop the business of the lines, that they are interested in.

Q. Now, Mr. Johnson, isn't it a fact that any policy that will increase and develop the business of the railroad generally, will benefit every branch of it: isn't that true, as a general rule?

A. Well, I should think it would be, as a general rule. If we can develop our interstate business it will naturally bring about a development of the State business.

789 Q. Aren't the two branches of traffic so intimately related that whatever affects one affects the other; and aren't they very largely dependent, in other words, upon each other?

A. I should say so.

790 Recross-examination of F. P. JOHNSON, resumed as follows:

By Mr. HILL:

Q. Mr. Johnson, have you the information we called for yesterday?

A. Yes, sir.

Q. Before we go into that I want to ask you some further questions on these statistics as to the density of traffic, which you called attention to yesterday in your Exhibit No. 6: You have the density of passenger traffic as 54,576, I believe the figures are:

How do you arrive at that sum?

A. The density of passenger traffic is 73,842,620 passengers carried one mile, divided by the mileage of the St. Louis, Iron Mountain & Southern Ry. in the state of Arkansas, 1,353.

Q. Where do you get the number of passengers carried one mile?

A. It is the third figure in that same block.

Q. You divide that by the mileage, 1353?

A. Yes, sir.

Q. How do you get the 72,939 in group 8?

791 A. That is copied from the report of the Interstate Commerce Commission.

Q. It is arrived at in the same way?

A. Yes, sir, in the same manner.

Q. That you arrive at your mileage in the state of Arkansas?

A. Yes, sir.

Q. Take the density of freight traffic, you have 487,919: how do you arrive at that sum?

A. That is the number of tons carried one mile divided by the track mileage in the state of Arkansas.

Q. That is, 660,000,000 divided by your track mileage of 1353?

A. Yes, sir.

Q. And the corresponding figure in the United States and group 8 is taken from the Interstate Commerce Commission's reports?

A. Yes, sir.

Q. And it is reached in the same way?

A. Yes, sir.

Q. I notice that your statistics are based on a six months period: Isn't that correct?

A. That is right.

Q. And the Interstate Commerce Commission's statistics for the United States as a whole and group 8 are based on a year's period, aren't they?

A. Yes, sir.

792 Q. Is your comparison correct comparing a six month's period with a one year's period?

A. No, sir, I don't believe that would be correct on that basis.

Q. You should do what to get a correct result?

A. In order to get the correct density of traffic to compare with the United States and Group 8, we would have to get the ton mileage for the entire period.

Q. Could you give that?

A. No, sir, not for the state of Arkansas. We could for the entire St. Louis, Iron Mountain & Southern.

Q. How does the entire St. Louis, Iron Mountain & Southern in the State of Arkansas run? Pretty near the same? Is it denser in Arkansas?

A. A little bit denser in Arkansas than on the entire St. Louis, Iron Mountain & Southern.

Q. You have not the statistics to give it for the year on the St. Louis Iron Mountain & Southern?

A. No, sir, I have no statistics for state lines prior to July 1, 1907. The statistics for the first six months of that year have not been compiled by states.

Q. Have you it for 1908?

A. Yes, sir.

Q. Could you make a calculation on that?

A. Yes, sir.

Q. I do not think that would be admissable unless you
793 would think it would be substantially the same?

A. The fiscal year ending June 30, 1908, would not compare with the fiscal year ending June 30, 1907.

Q. If they would not be substantially the same I do not believe we would have fair data to work on.

A. No, sir.

Q. Could you take it, assuming the balance of 1907 would be the same as that six month's period?

A. Well, hardly. Our business for the six months ending June 30, 1908, was not nearly so good as for the six months ending Dec. 31, 1907.

Q. If it would be the same or substantially the same, you would have to double the figures you have given here?

A. If the volume of business was substantially the same in both halves of the year, then we could arrive at a close estimate by doubling those.

Q. You would take the 73,000,000 passenger miles and double it and divide by your 1353 miles?

A. Yes, sir.

Q. And you would take your 660,000,000 ton miles of freight and double that and divide it by your 1353 miles?

A. Yes, sir.

Q. You can see now at a glance, can't you Mr. Johnson, that the density of traffic in Arkansas will exceed that of group 8?

A. Yes, sir.

Q. So, the reasons you assigned yesterday, based upon
794 that misapprehension, would not apply, would they?

A. That is, the element of density of traffic would not apply. That is one of the elements that accounted for it.

Q. Mr. Johnson, give us the data we called for yesterday, in whatever order you have it there.

A. We have a contract with Mr. C. A. Pratt for the use of our facilities in the old depot at Little Rock. That contract was dated January 1, 1905, and expired Dec. 31, 1905, and called for an annual rental of $1.00 a year.

Q. Did that cover this period we are inquiring about?

A. No, sir. That rental was paid on the 23rd of January, 1905. The contract expired Dec. 31, 1905, and was not renewed for the old depot. We have a new contract with him that covers the new

station property. But the last rental we collected was on January 23, 1905, covering the rental for the calendar year 1905.

Q. Under what arrangement were you operating during the period we are inquiring about in 1909?

A. There was no contract in force and he was acting practically under the contract of 1905. It was never renewed.

Q. Paying $1.00 a year.

A. Yes, sir.

Q. What did that include?

A. That included all the privileges in the old depot in Little Rock.

Q. The saloon, the parcel room, the hotel and the eating
795 house?

A. Yes, sir, and everything else.

Q. What about the maintenance of that?

A. We maintain the depot. We maintain all of the property—that is, the repairs.

Q. You kept up that station like any other station, and kept up the property like you keep up any other property?

A. Yes, sir.

Q. None of these miscellaneous receipts you have given in your exhibit, from the parcel room and these various "catch penny" enterprises, and from the eating house and the saloon privileges, have been derived from that place?

A. From Little Rock?

Q. From that station there at Little Rock.

A. We have the automatic vending machines, the catch penny schemes, as you call them, that does not come under the contract with Mr. Pratt.

Q. That does not come under that contract?

A. No, sir.

Q. I understood you a while ago to say that all those privileges came under his contract.

A. By "all those privileges" I meant the hotel, restaurant and saloon. The automatic vending machine is merely a machine put in on the platform.

Q. What else was in that hotel? There was a parcel room?
796 A. Yes, sir.

Q. Did Mr. Pratt get the parcel room receipts?

A. Yes, sir. And there was also a barber shop.

Q. And how about the news privilege there?

A. He had the privilege of selling newspapers, etc., in his office there. Mr. Vannoy, I believe it is also has the news privilege there.

Q. I am not familiar with such privileges so I wish you would enumerates all the privileges that go into that, if I have not named them all.

A. Mr. Pratt had practically all the fixed privileges in the old depot. He maintained a hotel, had an eating house, there was a saloon there and I think a barber shop. Also a lunch counter. That is all I can think of.

Q. And the parcel room?

A. Yes, sir, and the parcel room.

Q. The news stand I believe you have named?

A. Yes, sir. Mr. Vannoy has a contract that covers all of the mileage of the St. Louis, Iron Mountain & Southern, for the news privilege.

Q. And Mr. Pratt also had the news privilege there?

A. Yes, sir, he had a privilege there.

Q. Did he have the weighing machine too?

A. No, sir, those weighing machines all come under this former contract we have.

Q. What is the next of the matters we were looking into?

797 A. The next was in connection with Lake and Henry's service rendered to the St. Louis, Iron Mountain & Southern. There were 13 vouchers during the six months amounting in total to $852, and they covered fees paid to Leake and Henry in taking care of our interests in cases that were brought in Texas. Most of these cases, the fees were nominal, $10, $15 and $25 for services, and incidental expenses in connection with the suits. Most of those suits were for the shipments of freight consigned to points on our line, where the Iron Mountain was a party to the haul, and was made a party to the suit.

Q. Aren't you mistaken about it being a party to the suit, Mr. Johnson?

A. No, sir, we might receive a shipment say, delivered to the I. & G. N. for delivery at Memphis. And there was an unlocated loss on that shipment. That shipment reached its destination, damaged, or it had gone astray. The Iron Mountain was made a party to the suit and we were compelled to have somebody represent us.

I say that is a part of those suits. I notice among these suits one for $2,000 for personal injuries to a switchman at Texarkana.

Q. Texarkana, Arkansas, or Texarkana, Texas?

A. Texarkana. Our switchman at Texarkana.

Q. Texarkana is in both states, you know.

A. The only liability we would have there would be if

798 one of our men would happen to cross the state line.

Q. How much was their fee in that case, do you recall?

A. Their fee in that case was merged with other fees, and they received $250 for their services in several cases.

Q. You do not know what the specific item in that was.

A. No, sir.

Q. With the exception of that personal injury case, all of these other services grew out of the interstate shipments, didn't they?

A. We have one case with Leake & Henry, where the fee paid was $50 and it was for services rendered to the St. Louis, Iron Mountain & Southern in a suit for damages to two race horses shipped from Texarkana to Hot Springs, Arkansas.

Q. That is an interstate shipment?

A. It would be if it were from Texarkana, Texas. The shipment itself shows to be from Texarkana to Hot Springs.

Q. You don't know whether that was interstate or not?

A. No, sir. I have another case here of a fee of $75 for taking

care of a suit for damages while riding in a coach between Texarkana and Memphis. Now that happens to be an interstate journey because it went to Memphis.

Q. What others have you there?

A. The rest of the cases are all in connection with interstate shipments.

Q. Everything there is an interstate shipment unless it is that personal injury suit and that shipment from Texarkana,

799 which you don't know is state or interstate.

A. No, sir, I don't know whether it is state or interstate. But if we received it at Texarkana from a connecting line it would probably be interstate. If the shipment originated at Texarkana we would treat it as a state shipment.

Q. I presume most likely it originated from a connecting line, or the suit would not be in Texas, would it?

A. I have not any idea how those suits are brought.

Q. What is the next item you have there?

A. As I say, there are quite a number of those items and they are all interstate shipments.

Q. I mean the total.

A. The total amount for both Leake & Henry and S. R. Fisher amounts to $852.

Q. What you have said about Leake & Henry also applies to S. R. Fisher?

A. Yes, sir. There are two vouchers for S. R. Fisher.

Q. What is the next item you were to look up.

A. The next item was the method of dividing the expense of Oscar L. Miles.

Q. Your Fort Smith attorney?

A. Yes, sir. I find during this six months his salary was divided on the train mileage basis. It was not until 1908 that they adopted the revenue system on that class of accounts.

800 Q. That applies not only to his salary but to his assistants, and his office expenses?

A. His entire account. It is divided on the basis of track mileage in each state.

Q. That is the entire expense of your legal department at Fort Smith?

A. Yes, sir.

Q. I believe I asked you about the Bunch elevator?

A. No, sir, you found the Bunch elevator. You asked me if I knew what the value of that property was.

Q. I thought I asked you if you knew where that was assessed?

A. I don't remember that.

Q. I may have overlooked that but I intended to ask you if you had any data or if you could find that out?

A. The only way we could find out would be from the Taxing Board of Arkansas.

Q. Is it included in your property here or is it included as outside property? That is the only interest I have in it.

A. I have not any idea where you could find that out from our record.

Q. I expect I will have to get that information.

At this point Mr. F. P. Johnson is withdrawn.

801 R. E. KIMBALL, recalled, testified as follows:

Cross-examination (continued).

By Mr. HILL:

Q. Mr. Kimbell, you have handed us two detailed statements, one showing the revenue in detail and the other showing operating expenses in detail, which will become your *your* exhibits 21 and 22?

A. Yes, sir.

The papers referred to are marked respectively "R. E. Kimbell Exhibit 21," and "R. E. Kimbell Exhibit 22."

Said exhibits are in the words and figures following to-wit:

For Exhibit 21, see Volume 8, page 5324.

For Exhibit 22, see Volume 8, page 5326.

802 Q. Mr. Kimbell, how did you get at the switching revenue (the 9th item) separated between the state of Arkansas and the balance of the line?

A. We allotted that as to the state.

Q. The actual location?

A. Yes, sir.

Q. How did you divide your express revenue, on what basis?

A. Allotting it to the state of Arkansas.

The express revenue is allotted on the basis of the revenue passenger train miles.

Q. And how do you allot the mail revenue.

A. Mail revenue is allotted to the states on the basis of the track mileage for the mail route, pro rated, to each state.

Q. Explain that. I don't quite understand that.

A. For example, we have a route from Cairo to Texarkana, which is our biggest route. We would divide the compensation paid us for the use of that route between Missouri and Arkansas, based on the mileage in Missouri and the mileage in Arkansas.

Q. And you did the same with each contract, separately?

A. Yes, sir.

Q. Instead of taking all the contracts together you took each and allotted it according to the mileage?

A. Yes, sir.

803 Q. Car service is demurrage?

A. Yes, sir.

Q. And how did you divide that?

A. It is localized to the state of Arkansas. If it accrued within the state of Arkansas, it was credited to the state.

Q. The switching I believe you said is done the same way?

A. Yes, sir.

Q. If you had a car switched to the St. Louis, Iron Mountain & Southern over your road for Pine Bluff, you credited that to Arkansas revenue?

A. Yes, sir.

Q. This account No. 19 "miscellaneous" how do you divide that?

A. We divide that on the basis of total revenue train miles, total train miles in other states on the one hand and total train miles within the state of Arkansas on the other hand.

Q. What are the principal items included in that "Miscellaneous" account?

A. As I recall it, that was for detouring passenger trains for the St. Louis Iron Mountain & Southern principally.

Q. And you divide that on what basis?

A. On the basis of the train mileage made throughout the line, allotting to Arkansas its percentage proportion, arrived at on the train mile basis.

804 Q. Suppose that service was all done within the state of Arkansas. Suppose the St. Louis, Iron Mountain & Southern tracks between Little Rock and Pine Bluffs would go out of service and they would detour their trains over your track there?

A. An item of that nature could be localized to Arkansas.

Q. You have not attempted to do it?

A. We have this general basis and it is followed in the division of the revenue.

Q. But all the detouring of the trains, and the revenue from the trains, can be localized except where it crosses the State line?

A. Yes, sir.

Q. Your record shows what the service is from, so it could be made up in your office?

A. It does.

Q. What are the other heavy items making up that "miscellaneous"?

A. As I testified the other day, looking at the classification that appears to be the only item in that account, without an analysis of it.

Q. If there are any other items, they must be small?

A. Yes, sir, they must be very small.

805 Q. Mr. Kimbell, I believe it is possible you and I are calling for different accounts. I called for Miscellaneous account No. 19 and I rather think (Mr. Wharton calls my attention to it) that you are probably referring to another account.

A. No. 19 is a miscellaneous account, to which trains moved over our line under a detouring arrangement would be credited.

Q. The other day I understood it the other way.

What is in account No. 11 "Miscellaneous Transportation Revenue"?

A. That is revenue, as I recall it, charged for re-consigning cars and transferring overloaded cars en route, and items of that character.

Q. I see there is a very small proportion of that in Arkansas.

A. It is a very small item in the aggregate, anyhow.

I might explain that, in a general way, Judge Hill, by saying

that that account is largely made up of charges we assess for transferring overloaded cars, and for re-consigning cars of lumber. We originate a great deal of lumber in Arkansas and by the time it reaches our northern terminals at Illmo and Dupo, we have re-consigning on it and that re-consigning is done outside of the state of Arkansas; and perhaps that accounts for the small proportion in Arkansas.

Q. How have you divided that item as between state and interstate?

A. It is divided on a train mileage basis.

806 Q. That can all be located, can it? That can be localized between the state and the entire line?

A. That amount is made up of reconsigning charges; stop over charges, and charges for transferring overloaded cars en route. It might be proper to localize the transfer of an overloaded car at some certain point, but it is a question whether it would be proper to localize a reconsignment charge. There might be no particular service done at the point where the car happens to be caught, by wire, and reconsigned. It is a charge that I should say properly would accrue to the entire route of the shipment over our line.

Q. That only happens in most instances, in interstate shipments? There would be a very few instances of that kind within the state?

A. I should say, yes. It does happen to interstate shipments largely.

Q. In your maintenance of way and structures operating expenses, how have you divided those various items, without taking them up in detail?

A. I would refer you in that connection to my Exhibit 18.

Q. You might answer that generally. You have divided them according to your Exhibit 18?

A. Exactly.

Q. You followed that in making these divisions?

A. Yes, sir, from which it will be noted that almost all of

807 the maintenance of way expenses are localized.

Q. Mr. Kimbell, I wish you would explain item No. 27 of Exhibit 22, containing the joint yards, tracks and other facilities.

A. That item No. 27 represents the proportion of the maintenance expenses of our lines—that is, the greater part of it—between Dexter, Missouri and Illmo, Missouri, used jointly by our line and the St. Louis Iron Mountain & Southern.

Q. Including the Thebes Bridge?

A. That is not involved in this. You will notice that consumes practically all of the credit. We have a few joint facility arrangements in Arkansas where we receive a credit, but they are very few. I mention The Pine Bluff Arkansas River Railway, one of our subsidiary lines, which uses our line between Pine Bluff and Robroy. The greater part of that credit, so far as Arkansas is concerned, is derived from that account.

Q. What about No. 26?

A. No. 26 is a charge we pay the greater part of it for the use

of the Illinois Division of the St. Louis Iron Mountain & Southern, the maintenance proportion of that expense.

In Arkansas there is $12,000 charge and my recollection is that the greater part of that is a proportion of the facilities at Little Rock, which we pay to the St. Louis Iron Mountain & Southern for the use of their facilities.

Q. Don't you pay anything at Texarkana?

808 A. And there is some at Texarkana. There is also a little payment at Pine Bluff, for the use of the Pine Bluff passenger station.

Q. That is represented in that $12,000?

A. Yes, sir. That is, the maintenance part of it.

Q. Take No. 35 of Exhibit 18, under maintenance of equipment and repairs to cars; and the same item runs to repairs of locomotives and others.

I wish you would state your basis for this division between the line and the state?

A. In the case of passenger cars the amount of ordinary repairs is pro rated between the states on the passenger car mile basis.

On freight cars, on the freight mile basis.

On locomotives, on the locomotive mile basis.

Q. Have you an item there of repairs to tools?

A. Yes, sir, account No. 47.

Q. What is included in that?

A. That is, as its name indicates, shop machinery and tools.

Q. How do you divide that?

A. On the basis of revenue train miles, between states.

Q. You do not localize that to the shop in Pine Bluff?

A. No, sir.

Q. Where are your shops?

A. At Pine Bluff.

809 Q. Where else on this line?

A. Only at Pine Bluff. We have repair shops at outside points. But they are small.

Q. These items all occur in the Pine Bluff shops, I presume, do they not?

A. Yes, sir.

Q. Take item 53: where does that come from—and I believe item 55 goes with that?

A. Those are the corresponding accounts to the maintenance accounts Nos. 26 and 27.

Q. And are derived from the same points?

A. They are a proportion of the same expenses.

Q. Just divided so much for maintenance of way and so much for maintenance of equipment?

A. Exactly.

Q. On what basis do you divide that between maintenance of way and maintenace of equipment?

A. That is purely on an arbitrary basis. It is figured as near to the service as it can be figured at the several points.

Q. While it is arbitrary, you attempt to make it as near actual as is possible?

A. We have a percentage worked up, which we probably will use for a year or two, but it — as near correct as we consider it should be.

Q. Take your items No. 54 and 56: they are the corresponding items, I presume.

810 A. Those items are a requirement of the Interstate Commerce Commission that the operating expenses shall be charged and credited with a proportion of the rentals we receive and pay for the hire of equipment. And the rates at which it was charged during this year was 24% of the regular per diem rate of 50 cents per day. The rate of 12 cents per day was provided by the Interstate Commerce Commission.

Q. Does this represent the 12 cents per day?

A. Yes, sir.

Q. You have a large credit to that, haven't you?

A. That signifies that there are more of our cars on foreign lines than there are foreign cars on our line.

Q. And it is a considerable source of revenue to you?

A. Yes, sir, I will call your attention to the fact that we credit it to Arkansas.

Q. You credit a proportion to Arkansas. How did you get that proportion which you credit to Arkansas?

A. That is on the basis of the total car miles of foreign line cars on this line, so far as cars are concerned.

And it is on the basis of locomotives so far as locomotives are concerned.

That refers to account No. 54.

Account No. 56 is credited on the basis of the total revenue car miles of home cars on this line, so far as cars are concerned.

And on the basis of locomotives, so far as locomotives are

811 concerned.

Q. Take item 58 "Outside Agency": how have you divided that between the line and Arkansas.

A. That is divided on the train mileage basis.

Q. What do those outside agencies do?

A. That includes the salaries and the office expenses such as rent, light and heat, and the salaries of all the traveling and soliciting agents located away from a point on the line. Those are the items that are embraced in that account.

Q. Are any on the line included in that account?

A. There are one or two employés of our division freight agent's office in Little Rock that are included. That is true. But outside of that, I think they are all off the line.

Q. Account No. 62 is "Industrial and Immigration Bureau." Where are they located?

A. Principally in the industrial agent's private car, developing business up and down the line. His office is in St. Louis.

Q. How do you divide that as between Arkansas and the entire line?

A. On a revenue train mileage basis.

Q. With the exceptions of these two clerks in the office at Little Rock, all of those outside agencies are outside of the state of Arkansas, aren't they?

812 A. I think that is true, with the exceptions of this Little Rock office, yes, sir.

Q. There are two there I believe you said?

A. Yes, sir.

Q. This item for fuel for road locomotives, Account No. 48, and also "Water" account No. 89: are those localized between the line and the state?

A. No, sir.

Q. How are they divided?

A. They are divided on a locomotive mileage basis.

Q. Both of those accounts?

A. All of those locomotive road expenses.

Q. Are the locomotive and train miles identical on your road?

A. Not always. The locomotive makes switching mileage, which will account for the large difference between the locomotive mileage and the train mileage.

Q. You do not have any double headers on your line, do you?

A. Occasionally, we do but not as a general thing.

Q. How much do you add to the locomotive mileage for switching, on your local trains?

A. We follow the Interstate Commerce Commission's requirement on that, which is as follows:

"Switching miles should be computed at the rate of 6 miles per hour for the actual time engaged in such service, in excess of
813 one hour at any one station."

That is a quotation from the Interstate Commerce Commission's classification.

Q. The first hour is not counted, and after that it is counted at the rate of six miles?

A. Yes, sir.

Q. You follow that classification.

A. We do. We follow the Interstate Commerce Commission's classification strictly in the compilation of all mileage statistics.

Q. How do you divide Account No. 116 "Law expenses" between the state and the entire line?

A. On the train mileage basis.

Q. Mr. Kimbell, you have put in an exhibit on a computation of your expenses on the revenue basis: so we can understand just exactly what the revenue basis is, I want you to make a simple computation, using $100,000 as the entire state revenue, for a convenient figure to utilize.——

A. I would a good deal rather figure out any problem on the stand. If you will give them to me I will work them out for you off the stand.

Q. Very well. Then I will ask you to work out the following

example for me, using the revenue basis as you have used it in your exhibit:

Assume that the entire revenue from the freight in the state was $100,000.

814 That the entire freight expenses say were $3,000.

That the interstate freight revenue was $85,000.

That the state freight revenue was $15,000.

Then, calculate the amount of expenses chargeable to the intrastate business and the amount of expenses chargeable to the interstate business.

Then assume that the intrastate state rates are increased 33 1-3%.

Then make the same calculation, showing what amount is chargeable to the intrastate business and what amount is chargeable to the interstate business.

Assume that the $70,000 expense account would remain stationary, and that the other rates remain stationary, except the changes I have indicated.

I would like you to file that as indicative of your revenue theory.

A. Very well.

Q. I will ask you also to file that under Judge Van Devanter's rule, assuming 100% more cost for the operation of the state freight business, leaving out of this entirely the passenger proposition.

A. Very well.

815 Redirect examination.

By Mr. MOORE:

Q. Mr. Kimbell, what kind of duties are performed by the outside agencies mentioned in Item 58, of Exhibit 22?

A. Those men are engaged in the solicitation of traffic.

Q. You stated in your former examination, explaining the test you made in the month of October, that you employed special men to ride on every local freight train running in the state during that month; you also stationed men at terminal points: for what purpose were men stationed at the terminal points?

A. They were stationed there to get a record of the shipments in and out on through trains; the men on the local trains being necessary to take care of that part of the business.

Q. You stated also that these men were provided with special forms on which they were required to make an abstract showing way-bills, revenues, points to and from, and weight of all freight handled on their train: does that include through, as well as local trains?

A. Yes sir, both classes of trains.

Q. Did that test furnish you with information as to the ton miles on dead weight, including the locomotive, caboose, and the cars, loaded and empty, on all trains?

A. It did, on all classes of trains.

816 Q. Referring to Exhibit 19, you stated on cross examination, that you computed the revenue on through trains to the amount of $6,794.96, by applying the average revenue per ton mile

of state freight during the month of October, as shown in the regular accounts, to the ton miles are shown in this statement: how did you get the same as to interstate freight?

A. In precisely the same way.

Q. On the first sheet of Exhibit 19 you state: "The average cost of wages and fuel per ton mile on local trains, is greater than on interstate 5.5 times."

A. That statement has reference, Judge Moore, to the state freight costing 5.5 times more than the interstate freight.

Q. You said on cross examination that you reached that result on an average basis: I want you to state whether that result was borne out by the facts that you collected in making that test; whether the actual facts showing the difference in cost, as developed by the investigation made by these men who were on the spot, carried out and corroborated that result which you arrived at on the revenue basis?

A. That result is the result itself of the facts and data accumulated by these men on the trains.

The computations embraced in the securing of the actual ton miles of state and interstate freight in through trains, and the corresponding items in local trains.

Likewise the actual expenditures for wages and fuel, which
817 are the principal items of train expense.

Now, having ascertained those, it became necessary to find a way of dividing the expense of the through trains, for example, between state and interstate freight.

No other basis presents itself to my mind as a logical one, except the revenue basis. Therefore it was used for that purpose.

Q. Mr. Kimbell, you state that in making this test men were placed on each local freight train and men were also stationed at terminal points. Your attention was called a little while ago to the fact that these men were supposed to obtain an abstract of all shipments, both state and interstate; and they also obtained the rate or light weight, of the cars and of the rolling stock, in both kinds of trains: is it true that that information furnished you the commercial ton miles of the state and interstate made by each through and local train, separately?

A. Yes sir, that is absolutely true.

Q. Did it also furnish you the ton miles of the dead weight on each kind of train?

A. It did.

Q. Mr. Kimbell, what was the relative average cost of the wages and fuel on through and local trains, per train mile, as shown by the actual facts ascertained in that test?

A. On through trains the actual cost for wages and fuel was 34 cents; and on local trains 50 cents.

818 Q. What proportion of the total state business handled during the month moved on each kind of train?

A. On the state business 22% moved on through trains and 78% moved on local trains.

Q. Were you able to ascertain the average cost for wages and fuel, per commercial ton mile, on each kind of train?

A. On through trains the cost as found to be $.000865; and on local trains $.003883; the cost being somewhat over four times.

Q. Is that fact ascertained on any basis which you might call arbitrary, or is the actual result of actual investigation of the actual facts?

A. That result is absolute.

Q. What proportion of all the state business was handled on local trains?

A. 78%.

Q. And what proportion of the state business was carried on through trains?

A. 28%.

Q. What proportion of interstate business was handled on through trains?

A. 92%.

Q. What proportion of interstate business was handled on local trains?

A. 8%.

Q. I want you to state, independently of any view you may have as to the proper basis of dividing expenses, whether
819 by revenue or any other basis, what these actual facts (which I understand are the facts ascertained by making this test), indicate?

A. I think I have explained before that this test embraces every freight train run on our line in the state of Arkansas, during the month of October 1908, and on every local freight train we placed special men for the purpose of accumulating data necessary to give us the actual ton miles of freight handled on that train.

This was unnecessary for through trains as we secured the data by placing special men at terminal points.

In the matter of wages we figured out the exact cost from the time slips for each train.

In the matter of fuel we required each engineer to make us a report at the end of his run, of the exact amount of fuel he had consumed on that run.

All of this data placed us in a position to ascertain exactly the number of ton miles of state and interstate freight on through trains, and likewise on local trains, and to make a division of expense of each class of train, which brings about the relative difference in the cost of state and interstate freight of 5½ times.

Q. Then, Mr. Kimbell, you don't depend entirely upon a division on a revenue or on any other basis, for the purpose of ascertaining this difference in cost. You have demonstrated it by figuring it, independently?

820 A. So far as the expense on through train as compared with the cost of the local train is concerned, there is no division necessary as between state and interstate. But when you seek to divide your expenses between state and interstate traffic then you must find a basis.

Q. I understand that, but what I want to call your attention to is whether the result of the basis you have adopted, to wit, the revenue basis, is borne out by the facts developed on this test—in other words, does that test corroborate it?

A. I think so, yes sir.

Q. Judge Hill read on your cross examination, an extract from the annual report of the St. Louis Southwestern Railway Company, for the fiscal year ending June 30, 1908, a statement to the effect that there had been a decrease in the operating revenue of $676,-290.00. I believe you stated that represented the lines with which the St. Louis Southwestern Railway is affiliated in Texas: can you tell me how much of that decrease is due to the line of the St. Louis Southwestern Railway?

A. For the year ending June 30, 1908, the total revenues of the St. Louis Southwestern Railway were $6,273,651.71.

For the preceding year, ending June 30, 1907, $6,698,427.60.

The decrease was $424,775.89.

The expenses for the year ending June 30, 1908, were $3,908,-127.78.

For the year ending June 30, 1907, they were $3,887,626.95.

An increase of $20,500.83.

821 The net operating revenues, being the difference between the revenues and the expenses, were, for the year ending June 30, 1908, $2,365,523.95.

And for the year ending June 30, 1907, $2,810,800.65.

The decrease being $445,276.72.

Now, this decrease is accounted for to the extent of about 50% by the proportion of depreciation charge made in the year ending June 30, 1908, which was not made in the preceding year.

There were also some changes in the accounts of the railroad, brought about by orders of the Interstate Commerce Commission, effective July 1, 1907, which made a comparison of the succeeding year with the past year, a very difficult thing. Certain charges were placed in revenue which had formerly been in the expenses, and vice versa. The real difference, which can be readily accounted for, was the depreciation charge, which was an entirely new charge, commencing July 1, 1907.

In view of these figures there does not appear to have been a very large decrease so far as the St. Louis Southwestern Railway proper, is concerned.

Q. In connection with a question on cross examination, relating to the source of income and the location of the loss from the operation of the road, you stated, I think, that there were losses in the state of Arkansas as well as in the state of Missouri: I wish you would state where the surplus of earnings or profits from operation, occurred from.

822 A. Unquestionably our profit is derived from our long haul, interstate traffic, which moves in large volume across the state of Arkansas.

823 Direct examination of R. E. KIMBALL continued, as follows.

By Mr. MOORE:

Q. What effect does the length of the haul and the increased tonnage have as between interstate and state business in reducing the comparative expense of operation?

A. The larger volume of long haul traffic necessarily affords the opportunity of loading the trains to nearer their maximum capacity and hauling the traffic at correspondingly less expense than the short haul traffic.

For example, in Exhibit 14, the average distance haul per ton in miles of State freight (which is representative of the short haul traffic) is 44 miles; and of interstate freight (which is representative of the long haul traffic) is 231 miles.

It is, therefore, apparent that it requires 5 shipments of state freight, with double station and train handlings for each, to make the same number of ton miles as one shipment of interstate freight.

The preponderance of long haul traffic, therefore, affects many of the elements of expense by largely reducing the same, as compared with the short haul traffic.

Q. Are those facts you have just stated elements which would explain the reason why your Company may earn a profit in its interstate business at the same time it is sustaining a loss on its state business?

A. I think it does.

824 Q. The Express business on your road is carried by an Express Company, isn't it? It is an independent organization?

A. Yes sir.

Q. I believe you have already said that the St. Louis Southwestern Railway has no records from which it could determine the character of the business done by the Express Companies, as between state and interstate.

A. That is true, yes.

Q. State how that business is handled, Mr. Kimbell.

A. The Railroad Company is required to handle free all safes, package trunks, as well as the messengers of the Express Company, in the cars assigned to express service.

Also all officials and agents of the Express Co. are carried free in passenger trains, when traveling on Express Company business.

The Express Company is permitted to send free over the lines of the Company, in our freight trains, such articles of equipment or other personal property as may be needed for its use in carrying on its business.

This free service is a part of the conditions of the operation of the express service over our line.

The compensation we receive for permitting the regular express business to be handled over the line is 50% of the earnings on such express business on our own line. That constitutes the elements entering into the express service.

Q. You stated on your former examination that under the contract of the Railroad Company with the Express Company you had

a right to look at their way bills: for what purpose is that done? I wish you would state sufficient in regard to the contract, that
825 we may understand the extent of and the limitations upon the rights of the Railroad Company to examine the way bills of the Express Company and the purposes for which that inspection would be made.

A. The Express Company is required, under our contract, to render to us each month a statement showing our proportion of the earnings on the business handled over our lines. And for the verification of those statements all the books, way bills and other papers of the Express Company, pertaining to our business, are subject to examination by any officer or employee designated by our General Manager.

The Express Company agrees under the contract, to retain such records for that purpose at least one year after the rendition of the accounts.

I do not find that we have any right or authority under the contract to examine the Express Company's records for any other purpose than the verification of the accounts as rendered by them to us.

Mr. HILL:

Q. Is this contract of which you have been testifying, in writing?
A. Yes sir.

Mr. HILL: I would prefer having the original rather than this secondary evidence, in regard to the contract.

Mr. MOORE:

Q. Have you any extracts from that contract?
A. The language I have used is in large measure an extract from the contract.

826 Mr. MOORE: I will get the contract for you, Judge Hill, and we can make excerpts of the parts pertaining to this matter. Do you object to a copy of it?
Mr. HILL: Oh no.

Mr. MOORE:

Q. Look at the paper I hand you, Mr. Kimbell, and state if that is a copy of the contract between the Railroad Company and the Express Co.

A. (After examining paper.) Yes sir, it is.

Q. Look at the heading of that contract and say which party is designated as party of the first part and which party is designated as party of the second part.

A. The St. Louis Southwestern Railway Co. is the party of the first part, and The Pacific Express Company is the party of the second part.

Q. I find a provision in this contract in the following language: "The party of the second part will render to the party of the first part not later than the 20th of each month a statement showing the amount due to the party of the first part under this agreement for the business of the preceding month, and will pay said amount on

the day the statement is rendered. And for verification of the accounts as rendered by said party of the second part, all books, way bills and other papers pertaining to the business of the parties hereto under this contract shall be subject to examination by any officer or employee designated by the General Manager of the party of the first part; and for this purpose all said books, way bills and
827 papers shall be carefully preserved by the party of the second part for at least one year after the rendition of the said accounts."

Is that the provision of the contract between the Railroad Company and the Express Company to which you referred in speaking of the rights of the Railroad Company under its contract to look at the books, way bills and other papers of the Express Company?

A. Yes sir, it is.

Mr. HILL: We would like to see that contract as an entirety in order that we may see whether there is anything else in it that is relevant to this issue.

Mr. MOORE:

Q. Mr. Kimbell how much time would it take to examine the records of the Express Company for the purpose of the verification contemplated in that provision of the contract I have just read?

A. I have never made a verification in full of our accounts, on account of the magnitude of the task.

Q. Mr. Kimbell to what extent would you go for an investigation of that sort? Would you go any further than to see if there was a correct rendering of the receipts?

A. An absolute verification would involve an examination of all the way bills, to see that they are properly abstracted and divided, etc.

Q. What would be necessary, for practical purposes, to enable the Railroad Company to accomplish the evident purpose of that provision, and see that it was not being imposed upon by false returns of the Express Company?

828 A. A general examination of the division and earning sheets, to illustrate to us that we were receiving the proper revenue to which we are entitled. This, however, would not mean that we would examine all the way bills, to verify the correctness of same as to rates, extensions, etc.

Q. Now what difference would there be in point of time and labor and interruption of the business of the Express Company, if you made an examination, even if you wanted to make it of the way bills, for the purpose of verifying the returns made by the Express Company and examining the way bills for the purpose, of determining what part of the business was interstate and what part was intrastate?

A. Well, I could only estimate that; but I should say it would take three or four clerks some three or four months to verify one month's account—and I may be under-estimating it.

Q. Would it be necessary in an examination of that sort to examine every way bill?

A. To be absolutely correct, it would.

Q. It would be in order to determine the character of the shipment, as between state and interstate.

A. That would require an examination of every way bill.

Q. Which would not only involve an examination of the way bill but also in order to determine the volume of each kind of business, to ascertain the amount earned on that way bill, the amount of the charge earned by that way bill.

829 A. It would.

Q. Is such an investigation practical, to inquire into the affairs of a separate and independent corporation? Have you ever known of such a thing as that being done?

A. We have never done it.

Q. You could not attempt to make a division without such an investigation as that, could you?

A. We could not, no sir.

Q. And you cannot make such a division upon any records kept in the office of the Company?

A. No sir.

Q. It is not practicable for you to keep such an account, on the data that is in your office, in the hands of your Agent?

A. No sir, it is not.

Q. Mr. Kimbell are you familiar with the manner in which mail is handled in the railway mail service, and also with the conditions that exist and have grown up under the contracts between the United States Government and the Railroad Companies as to how the compensation was fixed for the carrying of the mail? If so, I wish you would state what the conditions are.

A. As regards the compensation, the Post Office Department is required by law to weigh the mail on the mail routes for a number of successive working days, not less than ninety, and not less frequently than once in every four years, and to adjust the compensation on the basis of this weighing.

830 The service on train required by the Post Office Department is that the mail shall be conveyed with due frequency and speed, and that sufficient and suitable room, fixtures and furniture in cars or apartments, properly lighted and warmed, shall be provided for the postal clerks who accompany and distribute the mail.

In case the needs of the service for space and distribution require better facilities than can be secured by apartments in cars, the Post Office Department may authorize the use of railway post office cars, and additional pay may be allowed therefor.

All cars or apartments used for railway mail service shall be of such style, length and character and furnished in such manner as shall be required by the Post Office Department, and shall be constructed, fitted up, maintained, heated and lighted by and at the expense of the Railroad Companies.

Suitable safety heaters and safety lamps, as well as saws and axes are required to be furnished for use in case of accident.

The Railroad Companies are also required to convey upon any

train, without a specific charge therefor, all mail boxes, post office blanks, stationery, supplies and all duly accredited agents of the Post Office Department, and Post Office Inspectors.

The Railroad Companies are required to place their mail cars at points accessible to mail passengers or contractors for wagon service.

831 At points where a considerable amount of mail is handled the Railroad Companies must furnish the men necessary to handle the mails and to load the same in or take them out of the cars.

As regards the service at stations, I will say that at points where transfer clerks are employed the Railroad is required to provide suitable and sufficient rooms for handling and storing the mail and without a specific charge therefor.

These rooms must be lighted, heated, furnished, supplied with ice water, and kept in order by the Railroad Company.

Employees of the Railroad Company who handle the United States mails are required to keep a record of all the pouches due to be received or despatched by them, and to check all pouches when received or despatched.

The Railroad Company is required to take the mails from and deliver them into all terminal post offices, whatever may be the distance between the station and the office, except in Cities, where other provision for such service is made by the Post Office Department. In all cases where the Department has not made other provisions, the distance between the terminal post office and the nearest station is computed in and paid for as a part of the route.

The Railroad Company is required to take the mails from and deliver them into all intermediate post offices and postal stations located not more than eighty rods from the nearest railroad station at which the Company has an agent or other representative employed.

832 At junction points where the Railroad Company's stations are not over eighty rods apart, the railroad having the mails on its train to be forwarded by a connecting train, will be required to transfer such mails and deliver them into the connecting train. When the mail arrives at a late hour of the night the Railroad Company is required to retain custody thereof by placing the same in a safe or secure room or apartment of the depot until the following morning.

When mail cranes are used at stations the Railroad Company is required to furnish a lantern or light to be attached to the crane and keep same in proper condition.

For any failure or delinquency in connection with any of these rules of the Department, deductions from the compensation due the Railroad Company are made.

That is a general outline of the way I find the mail service is handled.

Q. What are the mail cranes that you speak of?

A. The mail cranes are established at points along the line where it is not practicable to keep an agent up late at night, for example, as

where the train does not make a stop, but catches the mail as it passes.

Q. Is it the practice to endeavor to deliver the mail at some of the stations without stopping the train?

A. I think it is done but it is not generally the practice with us, because we make most all of the stops.

Q. You state that mail is to be weighed not less than four years apart; how often in practice is that being done?

833 A. I think the Department is very regular in its mail weighings once every four years.

Q. And does the compensation based upon that weighing continue until there is another weighing?

A. Yes sir unless there is some change in the service.

Q. What do you mean by "change in the service"?

A. Additional facilities are provided, for example, in which case the Railroad Company would be allowed additional compensation.

Q. Do you know if there is any additional compensation growing out of increased weight allowed?

A. Generally not.

Q. How is the compensation fixed? Is it fixed by agreement between the Company and the Government, or is it prescribed by the Government?

A. It is prescribed by the Government.

Q. You stated on a former examination that mail matters are handled by routes and that the compensation is on a stated amount per annum. I wish you would explain those mail routes, and just what that signifies.

A. I will have to say from memory that we have perhaps twenty or twenty two routes on the Cotton Belt System, the main route extending from Cairo to Texarkana. Other routes exist, such as the route from Stuttgart to the end of the Stuttgart Branch, Gillett. Another route will extend from Lewisville, Ark, to Shreveport, La. Another one from Altheimer to Little Rock. Each part of the line is covered by a separate route.

Q. Are those local routes established for the purpose of

834 carrying the mail between the termini of the routes?

A. Yes sir.

Q. For instance, if there is a route from Stuttgart to Gillett, that is for the purpose of transporting the mails that is to be carried from Stuttgart to Gillett?

A. Yes sir, from Stuttgart to Gillett as well as intermediate mail that may be picked up.

Q. And as well the other way, from Gillett to Stuttgart and the intermediate points?

A. Yes sir.

Q. You say the compensation is allotted per annum; state just how that is arranged, please.

A. Based on the mail weighing, the annual compensation is determined.

Q. You are paid not by the trip or by any other way than by the year, so much per annum?

A. Yes sir, we are paid so much per annum.

I want to correct the statement I made the other day about our being paid quarterly. I find that we are paid monthly, under the rules of the Post Office Dep't.

Q. On the basis of compensation of so much per annum?

A. Yes sir, on the per annum basis.

Q. And that payment is for the route, so much per annum for each route?

A. Yes sir.

Q. You have been over the subject and described the manner in which the mail is handled by the Railroad Company: Now I
835 wish you would state whether or not there is any way in which it would be practicable to make an actual division of that business between state and interstate.

A. I don't see how it would be possible to divide the compensation for the mail service, between state and interstate.

Q. Is it practicable to keep separate account of the business—I mean with reference to the expense of the service, and of the two classes of service, state and interstate.

A. I should say that in view of the great variety and character of the service rendered in conection with handling mail, and to the fact that this service is so closely interwoven with the service of handling the railroad business generally, that there is absolutely no accurate way of determining the expense except upon a revenue basis, which comes nearest to taking into consideration all the elements of the service.

Q. In view of the service rendered by the Railroad Companies in the express business, I wish you would state if there is any way by which the expense chargeable to that service can be divided between state and interstate business other than on an assumed basis.

A. I think I testified, Judge, that a division was possible between state and interstate, by an examination of the way bills, if we had access to them.

Q. In the absence of the way bills, is there any way by which they could be divided?

A. Between state and interstate?

836 Q. Yes.

A. No sir.

Q. Are you speaking now of the expenses?

A. I spoke then of the separation between state and interstate, in answer to your question.

Q. What is the practicable method, in your judgment, for dividing the expenses of the business, incident to that service, as between state and interstate?

A. I don't know of any accurate way of making an absolutely correct division of the expenses of the express business from other railroad business, except on the basis of the revenue.

Q. You were speaking of dividing it from other kinds of business; I was going to ask you about that in the next question; if it were divisible, what would be the proper method of dividing it from other kinds of business conducted by the Railroad?

A. I think it is so similar to the mail business and so closely interwoven with other classes of railroad business, that there is no way of making an actual separation, except on the basis of revenue.

Recross-examination.

By Mr. HILL:

Q. Mr. Kimbell, the practical effect of your division of mail and express is to charge these accounts with the same proportion of expense that the interstate business is charged with, isn't it?

A. I consider that on the revenue basis all classes of traffic
837 would be charged with an equal per cent.

Q. That is the way you have treated mail, express, and other miscellaneous items, which you have filed here?

A. Yes sir.

Q. Then when you increase the expense of the intrastate business, you decrease proportionately the expense charged to mail and express on intrastate business also, don't you?

A. No sir.

Q. You do not?

A. No sir. The expenses of mail, express and miscellaneous are set aside on a straight revenue basis and when we assume there is an extra cost for handling state business it means a corresponding reduction in the cost of handling interstate business only, and does not affect the mail, express and miscellaneous.

Q. In the computation made under the direction of Judge Van Devanter did not he require that to be done?

A. No sir. Judge Van Devanter deducted the expenses for handling mail, express and miscellaneous, on a revenue basis, leaving the remainder of the expenses to be divided between state and interstate, freight and passenger traffic.

Q. Now I will call your attntion to your Exhibit 13, freight revenue, interstate and miscellaneous revenue; and to the difference in the increase in state revenue: do you see the total I am referring to?

A. Yes sir.

Q. What do you say to that?

838 A. If you will observe that exhibit closely you will note that the first item is "total operating expenses, taxes, rentals, and outside operations," from which is deducted "taxes, rentals and outside operation"; leaving the "total operating expenses" only.

Now our state revenue is shown by exhibit 12, freight as 9.79% of the total freight revenue, including miscellaneous. That per cent is increased under that first assumption of 50% extra cost, making the per cent 14% instead of 9.79%.

Judge Hill, at this point I see where I have made an error in the calculation, which was made entirely innocently, I assure you.

Q. Then in answer to my question you will have to state according to your exhibits here, that you have decreased the expenses charged to mail, express, and miscellaneous, by adding the increase to the interstate business, haven't you?

A. That calculation was made entirely by an oversight, and it is

not in accordance with our theory which we claim is correct. It is simply an error in calculation, which I would like to have the opportunity to correct.

Q. That is all right. Add any corrections you wish to make to it.

A. The increased per cent, you will notice, is arrived at by the formula which we claim is correct, but the application of this formula is made to the wrong figures.

Q. I want to submit to you exhibit 7 in the Iron Mountain
839 case, and ask you to look over that and see if the same mistake or wrong basis, as you now state it, is not used there.

A. I think Mr. Johnson can perhaps explain his statement better than I can.

Q. I just ask you, as an accountant, if it is not on the same basis as the one you have just stated in your exhibit.

A. (After examining F. P. Johnson Exhibit 7.) It appears to be, but I would have to work it out, to be certain.

Q. It appears to be the same.

A. Yes sir.

Q. You say that is wrong and that you should not decrease miscelaneous with the added cost of the state business: is that true?

Mr. MOORE: I should like to have your permission, Judge Hill, to have Mr. Johnson point out to Mr. Kimbell the confusion that has arisen in these figures.

Mr. HILL: I have no objection to that.

(At this point Messrs. Johnson and Kimbell examined the exhibits referred to.)

Mr. HILL:

Q. Are you ready now to answer the question Mr. Kimbell?

A. Yes sir. It was not my intention to do so, and I would like the opportunity of refiguring my statement by deducting the miscellaneous before adding the extra cost of the state business.

Q. I would have no objection, of course, to your adding any additional exhibits, but I want you to leave these exhibits, as they are, because they illustrate a point we are using in the matter.
840 Then you think the proper way is to just lay aside a proportion of miscellaneous revenue and make the calculation with the added cost for intrastate business as between state and interstate?

A. That is the theory laid down by Judge Van Devanter and it seems to me to be sound.

Q. That is the theory which you seek to present in this case, isn't it?

A. Yes sir.

Q. Under that theory the practical effect of the mail and express is to charge the expense of it in the same proportion that the interstate business is charged with it, isn't it?

A. That would not be the case after you had——

Q. I am speaking of before you take the added cost.

A. Yes sir on the straight revenue basis.

Q. On the straight revenue basis the mail express and other miscellaneous items would stand the same proportion as the interstate business; and you want to leave it after that, and add what you take to be the extra cost of the state business?

A. Yes sir, deducting correspondingly from the interstate.

Q. You have no data to determine if mail and express is costing you more than the interstate business, have you?

A. No data other than revenue.

Q. It may be costing you much more or much less, so far as you are able to learn from the actual facts?

841 A. It is one of those elements of expenses which is so closely intertwined with all the rest of the expense of doing the business, that there seems to be no way of dividing it, except on the revenue basis.

Q. In making the division on a revenue basis, between state and interstate, are you taking into consideration the increased revenue derived from the state traffic.

A. I am taking into consideration the exact revenue derived from all classes of traffic.

Q. The revenue per ton per mile on state traffic is something like two and one half times what it is on interstate traffic, on your road, isn't it?

A. Something like that, yes sir.

Q. You make two and a half times as much per ton per mile on that state traffic as you do on the interstate, and yet you add in addition to that five and a half times the extra cost: is that right?

A. Do I understand you to mean that we make two and a half times as much on a revenue basis as on what basis, for example?

Q. I did not say on any other basis. I said per ton per mile, you make two and a half times as much on your state as on your interstate business.

A. Our state traffic yields something over two times—I don't know that it reaches quite two and a half times per ton per mile more than what is realized on our interstate business.

Q. And yet you claim it costs five and a half times as much on the ton mile basis to handle that business as it does to handle the interstate business?

842 A. I have never made any computation on the ton mile basis.

Q. Haven't you used the ton mile basis in arriving at any of your calculations here?

A. Not in making the division between state and interstate.

Q. I know you have not in dividing between state and interstate.

A. In arriving at the revenue we necessarily arrive at the ton miles.

Mr. MOORE: I would like Mr. Kimbell to turn to his statistics he referred to a moment ago, where he said it cost two and a half times as much.

A. There are no statistics submitted which will show that theory worked out, Judge Moore. That was stated from knowledge.

Mr. HILL:

Q. Mr. Kimbell any statement of increased cost of the intrastate freight should take into consideration that you are making two and a half times as much on that as you are on the interstate traffic, shouldn't it?

A. It does do so when we use the revenue basis.

Q. Does it?

A. I think so. We credit up to freight revenue the full amount of the revenue earned on interstate traffic and likewise on state traffic. Therefore, when we divide on the basis of revenue the difference which you speak of is taken into consideration.

Q. I will put that same question to you, in this form Mr. Kimbell:
843 if you say that the intrastate freight costs twice as much as the interstate freight, on the revenue basis, don't you say in effect that it costs twice multiplied by two and one half per ton per mile?

A. I think your computation would involve a difference of five times as much.

Q. It would, wouldn't it?

A. No sir.

Q. Why wouldn't it?

A. We divide on the straight revenue basis.

Q. But to get your straight revenue you have gotten revenue from that of two and a half times what you get from the interstate, per ton per mile?

A. Yes sir, but when you divide expenses on that same basis, that same rate obtains, and not five times.

Q. But you are doubling your extra cost.

A. That percentage of extra cost is questionable. We have figured it on several bases, 50% and 100%.

Q. Take any one of them. I am taking them simply as an illustration, to illustrate the principle.

A. In effect, if we had one hundred per cent for extra cost it would mean something like five times as much as would be added on the ton mile basis.

Q. If you used the ton mile for ascertaining the revenue from the different classes of freight, intrastate and interstate, carried on your through and local trains, why don't you divide your actual train cost on the ton mile basis; I am referring now to your exhibit 19.

844 A. I have given a great deal of thought and consideration to this ton mile basis, particularly as our friends on the other side, representing the State of Arkansas, claimed it was the proper basis, at the time of the preliminary hearing in this case; and the conclusion I have reached is that it is an absolutely inaccurate basis to be used; for the reason that it measures all tons alike, high class freight with low class freight; car load with less than car load; long haul freight with short haul freight; they are all reduced to one common unit. The elements of the service are entirely lost sight of.

Now, on the other hand, it is my judgment that revenue in the first instance takes into consideration all of those elements, including

the different classes of freight; the long and the short haul; and that it comes nearer to covering all of those elements than any basis obtainable.

Q. That would be on the theory that the rates were based on the cost, wouldn't it?

A. It is assumed that rates are always made adequate to yield a proper return both to cover the cost and interest on the investment.

Q. If that were true, when the state rates are two and a half times greater than interstate rates, ought they not compensate equally with the interstate rates?

A. That question would depend very much on the extra cost for handling state freight. There is in my judgment an extra
845 cost.

Q. That is not due to the fact that that passenger crosses a state line. Isn't it due to the difference in the train service?

A. There are a great many elements which enter into that.

Q. There is no magic in crossing the state line, is there?

A. No sir, not at all. That is one class of business that might not cost any more than another class. But taking the aggregate business we find represented in the state business the short haul business; whereas in the interstate business we find represented the long haul, business. Now it seems patent on its face to me, that when it takes five shipments of state freight, five separate and distinct shipments to make as many ton miles as one interstate shipment, that there is necessarily a large element of extra expense there. That is a fact that I think is fairly borne out by the figures.

Q. That gets away from the question I asked you about the difference being in the class of train. Now you have been speaking about the expense of the local train and the through train in this test you made and you showed the percentage of interstate business on the through trains and the percentage of local business on the through trains, etc.; is that difference based on the difference in the train or on the train service, or what it based on? You say there is no magic in the state line.

A. None whatever. That is absolutely based on facts
846 which control the transportation and those facts are that 78% of the state business is handled on local trains, and the cost per ton per mile for handling business on those local trains is between four and five times as great as the corresponding cost for handling business on the through trains.

Q. And it resolves itself into a question of comparative expense of local trains and through trains, doesn't it?

A. That is one way of analyzing the situation.

Q. It costs no more to haul a ton of interstate freight on a through train than it costs to haul a ton of interstate freight, does it?

A. On that same through train?

Q. Yes.

A. No sir, I cannot see there would be any difference, except——

Q. And then——

A. Let me finish that answer, please. Except so far as the length of the haul is concerned.

Q. And the same is true of the local train? It costs no more to haul a ton of freight on that than it would on other classes of train, does it?

A. I should say not.

Q. You say "except for the length of the haul"; that brings in the question of terminals, doesn't it?

A. Yes sir.

Q. Is that a train cost?

A. Terminals, no.

Q. I was asking you about the train cost. This exhibit
847 you put in here was not applied to the train cost.

A. There is an element of train cost, however, in the fact that the long haul shipment can be and usually is hauled a long distance without the necessity of being handled; whereas it would take something like five state shipments or short haul shipments to make the same number of ton miles as that one long haul shipment, with the corresponding extra train handling.

Redirect examination.

By Mr. MOORE:

Q. You stated that one of the elements that entered into the extra cost of handling local freight is the shortness of the haul, that is, the short distance it is hauled, I believe.

A. Yes sir.

Q. You illustrated by stating that it would require five different shipments in local freight to be equal to one shipment of through freight, owing to the difference in the length of the haul.

A. Yes sir.

Q. Now, Mr. Kimbell, I believe you also showed that 78% of all the local freight is carried on local trains.

A. Yes sir.

Q. I believe you also stated that 92% of the interstate freight is carried on through trains, didn't you?

A. Yes sir.

848 Q. You were asked several times by counsel if there was any magic in crossing the state lines, and if it were the fact that it was hauled on a through or a local train that affected the cost; does the character of the service that is rendered to each class of business, increase the handling involved in the short rather than in the long haul?

A. That is true in connection also with the fact that the larger part of the state freight is handled on the expensive local trains.

Q. There are a great many other elements that enter into the difference in the cost of handling the local and the through trains, which you have not mentioned; I want to ask you if you have had any experience in operating, outside of the test which was made under your direction in October 1908.

A. No sir, my experience has been confined to handling accounts.

Q. Are you qualified to state all of the elements which enter into

the extra cost of handling local as distinguished from through freight?

A. I have no doubt an operating man could explain a great many I have not mentioned or do not know of.

Q. I have heard, for instance, that the expense of operating local trains is very largely increased by the fact that the employees who operate those trains receive higher wages.

A. I understand that to be the case.

Q. I have heard also that they work shorter hours for a
849 fixed minimum day's wages that they obtain.

A. That also is true.

Q. In that way the cost of the wages of employees on the two kinds of trains differs very materially; that of the employees on the local trains being very much higher. That is an element that enters into it, isn't it?

A. Yes sir.

Q. Isn't it also a fact that there is a larger comparative consumption of fuel required in operating local trains, on account of the frequent stops they make?

A. I should say so. But I think an operating man could better explain that.

Q. I wanted to ask you if you understand those differences as an operating man would.

A. Hardly.

Mr. HILL: I have not raised any question as to Mr. Kimbell's competency. I assumed he knew what he was talking about.

Mr. MOORE: I have never asked Mr. Kimbell anything about extra cost.

Mr. HILL: You opened up the question. He testified that was the right way.

Mr. MOORE: He testified about the revenue basis being the right way, but not about the extra cost.

Mr. HILL: I suppose this question would be more properly developed by an operating man, but if you choose to develop it through Mr. Kimbell I have no objection.

Mr. MOORE:

Q. Is the extra cost ascertained by a system of accounting, or through the actual operation of the trains?

850 A. It may be possible to analyze the accounts of a road and identify some of these elements of extra cost. We have tried to do that in the test I had made.

Q. Aside from that test I want to ask you if all the elements of extra cost are developed through the accounts of the Company, to the extent that they would by an operating man, directly connected with the operation of the train.

A. I should say not.

Q. If it costs more to operate local trains than it does to operate through trains, the fact that 78% of all the local business is carried on local trains would increase the ratio of expense to the extent

that the volume of the local traffic is greater on that class of train, wouldn't it.

A. Yes sir.

Q. And the same is true, isn't it, in regard to the percent of interstate business which is conducted on the through trains, which you say is 92%.

A. Yes sir.

Q. Those being less expensive trains and carrying so large a proportion of the interstate business, would materially diminish the relative cost per ton per mile, wouldn't it?

A. The results show that, yes sir.

Q. Do you recall the basis adopted by Judge Van Devanter in determining the relative cost of conducting state and interstate transportation?

A. Yes sir.

851 Q. Will you state what that was.

A. The revenue being first ascertained, and the expenses from conducting all classes of business being likewise obtained, the percentage which the revenue of mail express and miscellaneous business bears to the total revenue is deducted from the total expenses, leaving the expenses that are divisable between state and interstate freight and passenger traffic only. The revenue from state traffic was increased 100% and the revenue from state passenger traffic increased 15%. When this was done the percents were made as between state and interstate, and these percents applied to the expenses arrived at after deducting the proportion assignable to mail, express and miscellaneous.

Q. Was that the manner in which you intended to make up your statement?

A. That was the intention.

Q. Following Judge Van Devanter's formula?

A. Yes sir.

Q. But in making up the statement you find you have included the expense incident to mail express and miscellaneous matter, do you?

A. I find that in applying the percent of extra cost I have applied it to the total expenses, including mail, express and miscellaneous, which it was my intention to deduct before applying the percent.

Q. You have in reality not prepared a statement on the basis of or in accordance with the formula used by Judge Van Devanter.

852 A. My intention was to do so.

Q. But in fact it was not so prepared?

A. Unintentionally it was not so prepared.

Q. Will you prepare a statement based upon Judge Van Devanter's method of arriving at it, and attach that as an exhibit to your testimony?

A. I will.

The papers referred to will be marked as follows:
"R. E. Kimbell, Exhibit 12-A" and
"R. E. Kimbell, Exhibit 13-A".

Said exhibits are in the words and figures following, towit.
For Exhibit "12-*a*" see Volume 8, page 5297.
For Exhibit "13-*a*" see Volume 8, page 5302.

853 Cross-examination of R. E. KIMBELL continued as follows:

By Mr. HILL:

Q. You stated yesterday that it would be necessary in order to work up the intrastate and the interstate business in express matters, to examine all the way bills: I will ask you if it is not a fact that the express company keeps an agent's book that shows the origin and destination of each parcel of express carried?

A. I expect they keep records of that kind. I am not thoroughly familiar with them.

Q. But from your familiarity of express business, you have seen these books?

A. I know they keep a record of express forwarded and express received, but I do not know that they show in all cases the point of origin and the point of destination. There will be rebilled express.

Q. Well, it would be this: It might not show the point of origin, if it originated off its own line, but if it originated on its
854 line, it would show the point of origin, wouldn't it?

A. Quite likely. The heading of the way bill would show that.

Q. I am not speaking of the way bill but what is carried into their books.

A. Very likely their abstract would show it.

Mr. MOORE: Do you know about those things, Mr. Kimbell?

A. Yes, sir.

Mr. HILL:

Q. The only time the agent's book would not show that would be in the case of an express package received from some other express line, and then it would merely show it was received from the United States Express Company—or whatever company it was received from.

A. If a shipment is way-billed from a point in Arkansas to a point in Arkansas, that way-bill indicates that fact in the heading, then I know the heading is taken up in their reports in that way.

Q. If a piece of express is sent from St. Louis to Fort Smith or Little Rock, would not that likewise be shown?

A. Yes, sir, I think it would.

Q. And if it is sent to some point that the Pacific Express Company does not reach it would show merely it was received from some other express company at some given point, wouldn't it?

A. I think that is the rule.

855 Q. Isn't it a fact that from those books you could make up a division between state and interstate as well as you could from the way-bills.

A. I would not say those books would be entirely complete in that

respect; and, furthermore, as you know, we have no access to those books.

Q. Have you worked out the example I asked you to do yesterday on revenue?

A. Do you want that as an exhibit or as an answer to the question?

Q. Please file it as an exhibit.

The paper referred to is marked "R. E. Kimbell Exhibit 23." Said exhibit is in the words and figures following to-wit:

For Exhibit 23, see Volume 8, page 5330.

856 Q. Mr. Kimbell, I wish you would read into the record paragraphs 4 and 6 of the contract between the Pacific Express Company and the St. Louis Southwestern Railway Co.

A. Those Paragraphs 4 and 6, are in the words and figures following to-wit:

"In consideration of the facilities granted, and to be granted, under this agreement, the party of the second part agrees to pay to the party of the first part fifty per cent (50%) of its gross earnings on all business on the said lines of railway.

It is understood that the gross earnings on express business on the lines of railway of the party of the first part, of which said first party shall receive fifty per cent. (50%), shall include the entire earnings from local express business—that is, business transported locally to and from points on the lines of railway of the party of the first part, and its proportion of the earnings on through express business, arrived at by dividing the through express earnings on each shipment (not including charges advanced or proportion due other express companies) on a basis of the local express rates to and from the junction points of the railway lines over which the business is transported—in other words, the sums of local express rates will be used in dividing through rates between railway lines in interest.

The party of the second part will render to the party of the first part, not later than the 20th of each month, a statement showing the amount due the party of the first part under this agreement for the business of the preceding month, and will pay said amount on the date statement is rendered; and, for the verification of the accounts as rendered by the said party of the second part, all its books, waybills and other papers pertaining to the business of the parties hereto under this contract shall be subject to examination by any officer or employé designated by the General Manager of the party of the first part, and for this purpose all of said books, waybills and papers shall be carefully preserved by the party of the second part for at least one year after the rendition of said accounts."

Sixth. "The party of the second part agrees that its rate per one hundred pounds charged the public shall not be less than one and one-half the Railway Company's freight train rate on the same class of merchandise, except by special agreement with the Traffic Department of the said first party, and the said second party agrees

to furnish the Traffic Department of the party of the first part copies of all tariffs or other issues naming rates over the said first party's line of railway, promptly as issued."

857 Redirect examination.

By Mr. MOORE:

Q. Mr. Kimbell, you wish to correct a statement you made yesterday, I believe?

A. Yes, sir. In answer to Judge Hill's question yesterday regarding miscellaneous revenue account No. 19, I stated that the larger part of it embraced the amount paid to this company by the St. Louis Iron Mountain & Southern Railway for detouring trains between Pine Bluff and Texarkana; and I stated a division of that kind was made between states on the basis of train mileage.

I find, after looking into our methods, that we localize items wherever it is possible to do so, and divide only common items between States on the train mileage basis. And that this detouring service I spoke of in itself is localized to the State of Arkansas.

Q. I believe you stated it could be localized, in answer to my question?

A. Yes, sir.

Q. And now you find it was in fact localized?

A. Yes, sir.

Q. Mr. Kimbell, this exhibit 23 which you have just filed at the request of Judge Hill, is based on a hypothetical statement presented by him to you as follows:

Assume that the revenue from freight in the State is $100,000.

858 That the entire freight expenses in the state are $70,000.

That the interstate freight revenue is $85,000.

That the state revenue is $15,000.

He then asked you to calculate the amount of expense chargeable to state business and the amount of expense chargeable to interstate business.

And then to further assume that the intrastate rates are increased 33⅓%.

He then asked you to make the same calculation showing what amount is chargeable to interstate and what amount to intrastate assuming that the $70,000 expense account would remain stationery; and that the other rates would remain stationery, except such changes as he indicated.

Also under Judge Van Devanter's rule, assuming 100% more cost for state freight operations.

Exhibit 23, I understand, shows the figures prepared by you in working out that problem?

A. Yes, sir.

Q. Mr. Kimbell, is such a condition as that practicable and is it a fair test of the workings of the revenue basis, and the application of the rules prepared by Judge Van Devanter, of adding 100% extra cost of doing state over interstate business; and if not, I wish you would state your views fully.

A. The assumption of 33⅓% increase in freight rates, without any increase in interstate rates is in my judgment an
859 incorrect one. For that reason principally I should say that the example submitted by Judge Hill is not one that can be practically applied to any condition that might exist.

Q. Why do you say the assumption of the increase of state rates 33⅓% is incorrect?

A. I say it is incorrect without further assuming that there must be an increase in the interstate rates.

Q. In other words, the example submitted by Judge Hill disregards the relation between state and interstate rates, doesn't it?

A. It does.

Q. State if there is a relation, and if so what effect under the practice of the increase of the state rates would have upon interstate rates.

A. If the revenues from state business and the revenues from interstate business are increased or decreased proportionately, then, of course, the ratio remains the same. But if you assume that there is going to be an increase of 33⅓% (as was done in this example) in one class of business and not an increase of any character in the other class of business, then I would say the assumption is absolutely incorrect and impossible.

Q. And you base that upon the fact that there is a relation between the two rates under which when one is increased in the manner assumed the other necessarily would also be increased?

860 A. I am not a rate expert but I do know from general conditions that there is a relation of that kind, which could better be explained by a rate man.

Q. Mr. Kimbell, did you prepare additional statements which you stated on your examination yesterday you would prepare as your exhibits 12-*a* and 13-*a*, in regard to the earnings upon the basis to which your attention was called by Judge Hill?

A. I did, yes, sir.

Q. Is there any explanation you desire to make in regard to these exhibits? If so, I wish you would make it now.

A. I think the exhibits explain themselves, but it is well to call attention to the fact that so far as the freight business is concerned there is a very slight difference in the extra cost results figured in the way I originaly had them and in the way they now appear on exhibit 13-*a*.

Q. State right there what it is.

A. For example, on the assumption of 50% extra cost the amount in dollars and cents as figured on Exhibit 13-*a* is $74,423.30; whereas on exhibit 13 the amount is $74,548.74.

Now, likewise in the case of assuming 100% extra cost, the corrected figures on exhibit 13-*a* are $142,033.20; whereas on the original exhibit 13 they are $142,545.69.

These differences, it will be noted, are very slight and are due to the fact that a very small proportion of the miscellaneous revenue is freight revenue.

861 Now, a little different situation exists in the passenger traffic; the results showing that on the assumption of 25% extra cost as figured on the new exhibit, 13-*a*, the amount is $37,726.63 as against $48,291.45 on the original exhibit.

On the assumption of 15% extra cost the figures as shown on Exhibit 13-*a* $23,838.65 instead of $30,258.02 as shown on the original exhibit 13.

This larger change in the passenger business is explained by reason of the proportion of mail, express and miscellaneous revenue to the total passenger revenue being 17.43%.

Q. Mr. Kimbell, what is the difference in dollars in the result as to freight earnings between the statements which you filed this morning, on the basis of 50% increase in cost of handling the state freight business and 25% in the cost of handling state passenger business?

A. In dollars and cents the figures on the freight are $125.44.

Q. What is the difference on the basis of 100% increase in the cost of conducting state freight business and 15% increase in the cost of conducting state passenger business?

A. The difference in freight is $512.49. The difference in passenger on the 25% basis is $10,564.82. And on the 15% basis $6,419.37.

862 Q. There is a deficit in the passenger business on either assumption as to the extra cost of conducting business?

A. There is a deficit on the assumption of 15%. There is a deficit on the assumption of 25%. And there is a deficit on the straight revenue basis.

Q. What is the deficit in each case?

A. On the straight revenue basis $1,319.00.

On the 25% extra cost basis $39,045.63.

On the 15% extra cost basis $25,157.65.

That is on the bases of the figures shown in Exhibit 12-*a*.

Q. Now, state what the result is, in dollars and cents, as shown on the new exhibits, in regard to freight?

A. On the straight revenue basis there is a surplus balance, I will call it—of $141,129.57.

On the basis of 50% extra cost there is a surplus balance of $66,706.27.

On the basis of 100% extra cost there is a deficit of $903.63.

I might say in that connection that these results do not consider any return whatever on the investment.

Recross-examination.

By Mr. HILL:

Q. Mr. Kimbell, this change in the method of calculation which you have just been explaining, would make more difference in the St. Louis, Iron Mountain & Southern than it would in your road, wouldn't it?

863 A. I cannot answer that, Judge Hill, without checking the Iron Mountain's figures.

Q. I will call your attention to Mr. Johnson's Exhibit 3: he has on miscellaneous passenger 21.01 per cent. and your percentage for that same item is 17, I believe?

A. Yes, sir. Our percentage for that same item is 17.43.

Q. This change in the method of calculation would make more difference in the St. Louis, Iron Mountain & Southern than it would on the St. Louis, Southwestern Railway, wouldn't it?

A. It would probably make some slight difference. I do not know just what it would amount to.

Q. It would be more material on that road than on your road, having the percentage of 17.43 that would be eliminated?

A. It would be larger, yes, sir.

864 B. M. FLIPPEN, a witness of lawful age, being duly produced, sworn and examined on the part of the Complainant, testified as follows:

Direct examination.

By Mr. J. M. MOORE:

Q. Please state your name?

A. B. M. Flippen.

Q. Are you an official of the St. Louis, Iron Mountain & Southern Railway Company?

A. Yes, sir, I am Freight Traffic Manager.

Q. How long have you occupied that position?

A. Two years.

Q. How long have you been connected with that company?

A. Nearly five years.

Q. In what capacity did you serve prior to two years ago?

A. I was assistant Freight Traffic Manager prior to appointment as Freight Traffic Manager.

Q. Mr. Flippen, was a change made in the rates charged for the transportation of freight by the St. Louis, Iron Mountain & Southern Railway Company in the year 1908, in the State of Arkansas?

A. Yes, sir.

Q. That change was made following the order of injunction granted by Judge Van Devanter at the preliminary hearing of this case, wasn't it?

A. It was.

865 Q. You abandoned the rate that had been prescribed by the Railroad Commission of Arkansas, and put in a different class of rates?

A. Yes, sir, because we thought they were unremunerative.

Q. Was any change made, near the same time and in connection with the change in the state rates, in the interstate rates for the transportation of freight?

A. Yes, sir, there was. As soon as it could be accomplished, observing the usual statutory notice required by the Interstate Commerce Commission, and the work incident to the publication of the tariffs.

Q. Why was that done, Mr. Flippen?

A. Because we felt they were not remunerative in the same sense that the change in the state rates required, so the interstate rates were advanced in order that they might bear their proper relation to the state adjustment and as we term it, share their part of the transportation burdens.

Q. What is the practice of railroads usually in the observance of a relation between state and interstate rates, if there is any general practice.

A. There is a very close relation. In fact, the making of rates have to do with the commercial conditions; the cost of service; the conditions generally; and where the earnings have not been, as we figure it, compensatory in respect to state traffic, the same is
866 frequently true of interstate adjustments, because one is so very seriously affected by the other.

As in the case of the Arkansas state rates, if you please, for illustration, Memphis is just across the river from Arkansas, and that is an interstate adjustment; if your state rates are changed, either raised or lowered, it necessarily follows that there must be some readjustment of the interstate rates, because of the natural combination that works the bridge charge or the arbitrary crossing from Memphis to West Memphis, if you please, plus the state rates.

The same is true in that respect, that Memphis is adjusted with reference to Cairo and St. Louis, which are considered base points; there are certain differential figures observed, a certain equalization, if you please, at these various gateways. And if one is changed the other must be changed or it will work a hardship against such gateways and the territory working through such gate-ways.

Q. Judge Hill submitted a proposition to Mr. Kimbell in his cross examination in this case, assuming that the total freight revenues of a railroad were a certain amount; that those revenues accrued in certain given proportions, as between interstate and intrastate traffic; and assuming a certain amount of expenses.

He asked the witness then to figure out on the revenue basis what the expense would be of conducting freight transportation on the basis of the earnings from state and interstate traffic, respectively, and the total expenses.

867 Then he asked him further to figure what the result would be on the same, the revenue basis, if he should assume that the intrastate rates have been increased 33⅓%, leaving the interstate rates as they were originally.

He asked him to work out an example of what the result and effect of the raise in the intrastate rates, without any raise in the interstate rates, would have upon the expenses as worked out upon the revenue basis.

I wish you would state, as a traffic man, if such an example as that is practical, as an illustration. In other words, if the conditions upon which it is based are such as would occur in railroad practice.

A. I would say I consider it impossible, absolutely impracticable. It is mere theory. It will not work out. You cannot make it work out.

Q. Why do you consider it impossible to work out an example as-

suming that one class of rates should be increased and the others not changed; that is to say, assuming that the state rates would be increased 33⅓% and leave the interstate rates unchanged.

A. You mean the effect it would have upon the expenses?

Q. You said such a condition as that was impossible, meaning as I understand you, that the change of one class of rates would affect the other. Why is that true?

A. Because, as I previously stated, of competition and commercial conditions. It would result in rank discrimination against
868 the state man or the interstate man, if you please. There is such a close relation between the charge for the state freight and the charge for the interstate freight, that if you make a change in one without changing the other, then you are bound to hurt certain business interests seriously?

Q. Is it the universal custom in arranging a railroad rate to maintain the relation between interstate and intrastate rates?

A. Yes sir.

Q. That is the reason why such an example as was given to Mr. Kimbell is impracticable as an illustration?

A. I think so.

Q. Mr. Flippen, is there any regulation of the Interstate Commerce Commission that affects that proposition?

A. Yes sir. They hold by their rulings and in their decisions in various instances that the combination of rates if you please, whether two state rates, or an interstate rate plus a state rate, is prima facie evidence of the reasonableness of a charge of that kind. Therefore, if you raise a state rate it is only proper that the interstate rates should be adjusted in relation thereto. And that is followed as a practice and custom in making the rates.

Q. That rule, in other words the rule that the interstate rates will equal or be somewhere about equal to the combination of the rates in the state through which the shipment passes, is one that is recognized and acted upon by the Interstate Commerce Commis-
869 sion, is it?

A. Yes sir. Notwithstanding the influence that may have upon those state rates, they consider the fact that it is there is prima facie evidence of its reasonableness, and they insist upon its observance.

Q. Mr. Flippen, do the railroads that operate trunk lines as a rule maintain commercial agencies in other states than those in which the railroad itself is owned and operated?

A. They must necessarily do so in order to properly develop and handle the business that originates or finds destination within the various states.

For instance, the Missouri Pacific Railway traverses perhaps six, seven, or possibly eight states—I do not recall at the moment the exact number—and we have agencies throughout the United States, at the principal points of manufacture, the principal points of jobbing, and the principal points of forwarding shipments. That is all in relation to the development of the business that is intrastate as well as interstate.

Q. What are the duties that devolve upon those agencies?

A. To solicit business both ways, into and out of the state, and within the state; to be familiar with the resources and conditions of all of the territory the railroad traverses; to be in a position to meet the public; to attempt to advertise the state through which the road passes; in fact, they are particularly charged with the duty of
870 securing immigration, the location of industries, and the building up of the property, both intrastate as well as interstate.

Q. Are you familiar with the result of the efforts of that character of agent upon the traffic of the St. Louis, Iron Mountain & Southern Railway?

A. Yes, sir.

Q. As Traffic Manager is that within the scope of your duties, to be advised in regard to that?

A. Yes, sir. As I said, they are charged with the specific duty of the development of the property. They are part and parcel of it.

Q. In what way, Mr. Flippen, does the work of foreign agencies affect the local or intrastate traffic?

A. They have a great deal to do with it, in that in some of the large cities of the country where these so-called foreign agents are located, there is certain traffic that is controlled which is strictly intrastate.

I might cite, for instance, the case of Cincinnati, the Ivory soap people, the Proctor Gamble concern, have certain oil mill interests in the state of Arkansas. The traffic between points within a state, having its origin at a certain point and destined to Little Rock, if you please, or some other point, where these mills may be located, that traffic must be solicited and must be handled in the way of freight quotations, and by correspondence, I might say almost exclu-
871 sively with the traffic representative of that concern, who handle- and control- that business from the main office in Cincinnati.

The same is true of Chicago and other points, where these large industrial interests have their industries, and do certain business within the state of Arkansas, if you please. It has to be handled through these representatives at their headquarters.

Q. Mr. Flippen, in the illustration you put, of Cincinnati and this oil mill business in Arkansas, how does it come about that your foreign agents in the City of Cincinnati would be able to influence local shipments from one point to another point in Arkansas, from that office at Cincinnati?

A. In that the traffic is controlled by the representatives of the owners of this industrial interest in Arkansas, in the case I mentioned of the Proctor Gamble concern, it is controlled in Cincinnati; and, therefore, the solicitation for the handling and the effort to control this business, for instance between two points in the state of Arkansas, which may not be competitive particularly, must be handled through this agency.

Q. Please state an illustration.

A. Say from Brinkley or Forest City, if you please, cotton seed

and that sort of material, cotton seed and cotton seed hulls and cotton seed meal and cotton seed cake, shipped out of Little Rock to the points of consumption in Arkansas to competitive points on
872 the Frisco and the Cotton Belt Railroad. A great many points are common in the state of Arkansas and all that business has to be handled and solicited through the representations of these outside agencies.

Q. You mean to say that the routing you use of the cotton seed products in the oil mills or the products of the mill itself, to points within the state of Arkansas, is controlled at Cincinnati and not in the state of Arkansas?

A. So far as their interests in the mills are concerned, yes, sir.

Now, I frequently find it necessary to personally write the people in Cincinnati; and I sometimes make a trip to Cincinnati myself, to see them and ask if the conditions and circumstances are not such that they would favor us with their business say from Brinkley or Forest City into Little Rock.

Q. That applies to local competitive points, where they might ship over two or three lines of railroad?

A. Yes, sir. Of course, stuff that originates on the local line and is coming into Little Rock, if it moves in there you do not have to bother about that. But if it is at these competitive points, it is absolutely necessary to maintain these outside agencies, in order to secure a proper share of this business in competition with other lines.

Q. In that way their operations would have a direct effect upon the intrastate traffic?

873 A. There is no doubt of it in the world. It is a part and parcel of their duty. If you run through seven states you might say they have something to do in every state through which the railroad goes. They must know the conditions, and have the information in regard to the resources, or we do not think they are the right sort of representatives. They are busily engaged all the time in developing and trying to develop the resources of the state, because it is the development of those conditions that results in monetary returns to the railroad company.

Q. Referring to the interstate business that is influenced by those agencies: I suppose through their efforts considerable quantities of freight are transported from outside points, such as from wholesale houses or from industrial concerns, and jobbing houses into the state of Arkansas; is that true?

A. There is no question about that.

Q. Now, Mr. Flippen, are those shipments required to be distributed through the intrastate branch of your service, after the goods have reached the State of Arkansas?

A. Absolutely so. It would never reach the consumer otherwise. Arkansas of itself is a very limited producer of the manufactured articles of the country. That is, the ordinary stuff consumed within the state, such as boots, shoes, rice, molasses, if you please—all such articles particularly in the grocery line—they are all moved
874 from interstate points of origin. I might say perhaps 90 or 95% of them are moved from interstate points of origin,

And after they have been moved to the so-called jobbing points, which are limited in the state of Arkansas, perhaps they do not exceed 20 points, all of that has a direct influence upon the subsequent distribution of that stuff, which involves an intrastate movement.

Therefore, there is that same co-relation with the outside agencies. In fact, every employé of the railroad company must recognize that, because when it moves in there is an object in that; it does not mean its consumption at that particular point, but it must move again; and, therefore, that subsequent movement, I repeat, is an intrastate movement.

Q. Do these foreign agencies have any influence in causing industrial and manufacturing plants to be established in the state of Arkansas?

A. Oh, a surprisingly strong influence. We have had some of the best industries located in the different states through which our road passes, through the efforts of these agents; and the suggestion and then various conferences with these various parties; and trips with the men they know to point out to them the resources of the country; and then their subsequent negotiations with regard to facilities and trackage and rates, as to switching and interchange with connections, and all that sort of thing. Sometimes one man will spend as
875 much as 10 or 12 days in attempting to locate one industry.

Q. What effect does the location of a manufacturing enterprise of that kind have upon intrastate traffic in Arkansas?

A. It undoubtedly must redound to the development of the state and to the returns to the railroad company in the way of traffic.

A railroad has only one thing to sell, and that is transportation. The location of industries on its line means just that much more transportation to be sold.

Q. To what extent does it develop local traffic?

A. To the same extent it builds up local towns it builds up local traffic.

Q. Plants usually move material from the local points within the state to the place where they are located, and in that way builds up the local business within the limits of the state?

A. There is no question about that. That is the secret of the locating of an industry. They draw upon the resources of the state, such as its mineral or other products, and then the manufactured article is subsequently distributed to the consumer; as in a case I happen to recall, of the Arkansas Fertilizer Company.

That company draws its phosphate rock, which is the basis of its product, from Batesville, Arkansas. It employs men there
876 in getting out this stuff. It results in returns to the railroad company in the charges they get from it.

It comes to Little Rock or Lower Argenta and is there converted into the manufactured materials; and subsequently that goes out to the farmer and to the consumer and results in increased productivity of the soil, etc., and there are larger crops to be hauled. It is one of that sort of endless chain, propositions.

Q. In the instance you put, the fertilizer plant at Argenta or

Little Rock, you say it obtains the material which it converts into fertilizer, at Batesville?

A. Yes, sir.

Q. Where does it dispose of its products? Within the limits of the state?

A. I might say, according to their statement and our record, that 90% of their products finds ultimate destination within the state of Arkansas.

Q. And that transportation is all local?

A. Yes, sir, entirely so.

Cross-examination.

By Mr. Hill:

Q. Did this Arkansas Fertilizer Company you are referring to, establish its business through the influence of the foreign agencies?

A. It might have and it might not. I do not know the his-
877 tory of its establishment. But it is 99 chances out of one hundred that it was.

Q. You think your outside agencies established these plants?

A. Yes, sir, in the sense that I am an outside agent and my office is an outside agency; and the officials in New York and Memphis are outside agents. Some one particular man in the outside agency has influenced him to locate there, pointing out to him the advantages of such a location.

Q. Was that done in this particular instance you spoke of, this Fertilizer Company?

A. I don't know about that particular instance.

Q. You singled out that one industry as if you had established it there?

A. Not necessarily singled it out as if I had established it there, but citing it as an instance of what I referred to.

Q. Practically all of the freight handled by that concern is local?

A. I said that 90% of it was.

Q. And all the inbound freight from the Batesville quarry is local?

A. There is no question about that.

Q. All of its inbound freight would be local, and 90% of its outbound?

A. Not entirely all of it is inbound. The sulphuric acid and probably the pyrites, which all enters into the manufacture of the fertilizer, is perhaps all drawn from interstate points of origin.

878 Q. What per cent of the inbound freight to that plant would be intrastate and what per cent would be interstate?

A. To make a rough guess I would say 75%. There is a good deal of sand used in fertilizer.

Q. 75% of it would be intrastate?

A. Yes, sir.

Q. And 90% of the outbound freight would be intrastate?

A. I said 75% of the inbound freight would be intrastate.

Q. And 90% of the outbound would be intrastate?

A. Yes, sir, would find lodgment within the state. That is my guess. I do not know positively.

Q. Your intrastate traffic is unremunerative, I believe you said?

A. We certainly consider it so.

Q. Why do you want to spend money to get traffic that is unremunerative?

A. Why do we want to spend money to get traffic that is unremunerative?

Q. Yes.

A. We don't want to spend money to get business that is unremunerative; but we hope through the agency of the courts, or some adjustment to be made later, to get business that will be remunerative. And in the mean time we must get some business.

Q. Have you ever found the intrastate traffic remunerative?

879 A. Not in Arkansas. But under the voluntary tariff we issued in November 1908 we thought it was fairly representative of proper returns to us, and what we thought was a remunerative basis of figures; and what I considered really a scientific tariff.

Q. I will get back to that tariff a little later.

A. I suppose you will.

Q. Under your voluntary rate, before there was any Commission in Arkansas, did you find your state rates remunerative?

A. There were difficulties at that time, which, so far as my study of the property and my knowledge of it now goes——

Mr. MOORE:

Q. Were you there then?

A. No, sir, I was not. They were not, but they were operating under what might be called a sort of contingent basis, and I think it was an ill-advised proposition, all the way through.

Mr. HILL:

Q. Then so far as you know, the Arkansas state rates have always been unremunerative?

A. Yes, sir, until the establishment of this voluntary tariff.

Q. You refer to the tariff issued Nov. 2, 1908.

A. Yes, sir.

Q. So far as you know, prior to that date and going back to the matters we are inquiring into, your intrastate rates

880 have always been unremunerative?

A. Yes, sir, and that is true not only of Arkansas but other states we go through.

Q. Is that true in Missouri?

A. Yes, sir.

Q. How do you justify spending your money on the outside agencies to develop an unremunerative business? I am speaking of the past and not of what you prophecy as to the future, as the result of this litigation.

A. How do I justify spending money for the development of an industry which I figure is unremunerative?

Q. On which you figure the intrastate business is unremunerative?

A. With a volume of business, say 400% greater than we have today in Arkansas, we could afford to handle it at less rates. Therefore, if we can develop Arkansas by the location of industries there, and develop our tonnage to a greater extent than prevails today, we could unquestionably handle it at a lower rate than if that business was only nominal. That is the whole history of it.

We must develop it. Because they are consumers of interstate traffic.

Q. The whole proposition as to these outside agencies, goes back to the question of the development of the state?

A. Yes, sir, both. The state and the interstate. There is no question about that.

881 Q. The only ground upon which you can charge any of this expense to intrastate traffic is upon the ground of the benefit which the state would receive from the improvement in volume of traffic.

A. And the development of the traffic through the representation of said outside agency. The advertising, if you please, of the state and its industries.

Q. That is the same thing. It goes to the development of the state.

A. Certainly.

Q. You do not mean there would be any direct benefit to the state through these agencies, in influencing shipments from one local point in the state to another local point?

A. Certainly. If you develop the business you help one community as against another, and you are building up a game and through that means bringing the buyer and the seller together.

Q. It all goes to the question of development, and not to specific cases of soliciting freight and obtaining freight?

A. Oh, yes, I would not say it is not a question of not soliciting freight; because he does have to solicit freight.

Q. Intrastate freight?

A. Yes, sir, according to the concrete example I cited a moment ago, where I personally made a visit to Cincinnati to get
882 business from one point in the state to another point in the state.

Q. How did you get that cotton seed in Arkansas to move to a cotton mill, that would not have moved otherwise?

A. It would have been moved by our competitor. Therefore, that amount of my time is put into this thing on account of our freight business in the state of Arkansas.

Q. You got some cotton seed moved from Brinkley to Forest City or from Forest City to Brinkley, that might have moved into Brinkley over some other line; is that the idea?

A. Yes, sir.

Q. What other line did you have at Forest City, to move it over?

A. I don't know about between Forest City and Brinkley. I meant between Forest City and Brinkley and Little Rock. I used that as an illustration of my point, taking two lines serving those points into Little Rock, it is a question of the service and the equipment.

Q. Did you get that cotton seed moved from one point in Arkansas to another point in Arkansas?

A. Yes, sir. You have 41 cotton seed oil mills in Arkansas.

Q. I say, did you, by the solicitation you did in Cincinnati, get the business to move over your line?

A. Yes, sir. Through my personality and entertainment of the agent, and pointing out that we had the better facilities etc.

883 Q. Did the entertainment cost go in here too, Mr. Flippen?

A. No, sir, unfortunately that did not go in there.

Q. Why not that just as legitimately as the other. If we are going to have this indirect influence, and all that sort of thing?

You are speaking of competitive points, aren't you, Mr. Flippen?

A. Yes, sir.

Q. These outside agencies can have no influence on the non-competitive points in Arkansas?

A. Except in the development of the business.

Q. That goes to the question of development.

A. We have a point on our line, Judsonia, from which 75 cars of strawberries were shipped last year. Our outside agencies, have made efforts, to get additional farmers to go in there and develop that country. These farmers buy their box material for packing the berries, in the State; also their material for the crates. They get all their labor there.

It is all a closely co-related situation and you cannot get away from it.

Q. And the question of the relation of these things is the basis upon which you justify the charge?

A. Yes, sir, that is the broad term upon which you can

884 apply it.

Q. Coming to the tariff of November 2, 1908; you said you thought that was on a remunerative basis?

If you had applied the revenue theory to that, of doubling up your state cost of 100%, you would still have lost money on that, wouldn't you?

A. Yes, sir, I think we would.

Mr. MOORE: Have you any knowledge of that, Mr. Flippen? Do you know anything about that?

A. No, sir, I do not know.

Mr. HILL:

Q. You heard that testified to by Mr. Johnson, in the Federal Court in Little Rock?

A. I do not recall it.

Q. But as a mathematical proposition you know that is a fact, do you not?

A. What?

Q. That under that tariff, if you applied what they call "Judge Van Devanter's rule" of adding 100% extra cost to the state traffic, it would still be unremunerative?

A. I cannot say definitely as to that because it is a question of mathematics, and I have not gone into it.

Q. That is your information?
A. I have no information. I have not gone into the figures.
Q. I thought you said you thought it would.
A. I was merely guessing at it.

Q. That was an increase of more than 50% over the
885 Commission's tariff, wasn't it?

A. I do not recall what the percentage was but I know it did not yield that percentage of return in the revenue.
Q. I believe you claim your tariff increases it 42%?
A. I do not recall the figures but I believe it was 39.

Mr. HILL: I will ask Mr. Johnson.

Mr. JOHNSON: I think it was 42% for the two months we tried it.
A. Probably the two heaviest months in the year, November and December.

Mr. HILL:

Q. And still, under the 42% increase you thought it was unremunerative on the state basis?
A. I don't know what the figures are and that will have to be worked out by someone familiar with the figures.
Q. When you arranged that tariff, did you have a tabulation or statement of the cost and expenses of carrying the freight?
A. A general idea of it. And the tariff was made with respect to the commercial conditions, as we consider it, and by comparison with the rates that obtain in other sections of the country under like conditions.
Q. You did not know whether it was going to pay the extra cost entailed by the state business or not, when you put it in?

A. No one knows that, any more than we know what per
886 cent a tariff will return, until it is tried out.

You might handle 1,000 tons under the present tariff and you might handle 10,000 tons next month. It is a question of speculation.
Q. You cannot fix rates on the cost of operation?
A. You have to fix rates on the cost of operation in a general way, or you will not land right.
Q. It seems you landed wrong on your state tariff, didn't you?
A. Yes, sir, I don't think it is high enough.
Q. You say it was still unremunerative under this proof, and you should have made it higher, should you?
A. Yes, sir, I think we should. That is my judgment.
Like when you are selling goods, you know what it costs you as near as you can figure to manufacture your goods. But you cannot figure in your insurance and all those incidental expenses, down to the minutiæ; and at the same time you put on there what you think will yield a proper profit—and we haven't got it.
Q. If you succeed in getting this case won, as you prophesied a while ago, then you would in due regard to the interests of the company put your tariff in Arkansas higher than you had it on November 2nd, wouldn't you?

A. I think the tariff we had in effect on November 2nd, as near as I can estimate it, would perhaps yield proper returns, a fair return, for both sides of the case. That is all we are after.

887 Q. Still, it would be unremunerative as to the State business?

A. Yes, sir. Confined strictly to state business I believe it would not be remunerative. I cannot tell exactly as to that because I have not made any figures on it.

Q. You said that all the railroads have a practice of adjusting their interstate with their state rates; did you advance your interstate rates proportionately to the advance of your intrastate rates, in the tariffs that were promulgated after this injunction was obtained?

A. They could not be advanced proportionately, because they were all so much higher than the state rates. However, there was an advance in this interstate adjustment.

Q. You say they were relatively higher?

A. Yes, sir.

Q. Prior to that?

A. Yes, sir.

Q. You mean you charged more for interstate freight than you charged for intrastate freight?

A. We did, relatively. Therefore the state rates——

Q. What do you mean by the term "relatively?"

A. Does not the term explain itself?

A. Not quite, to my mind. I am new to these terms.

A. The first class rate, if you please, from St. Louis to Little Rock, I think is $1 per hundred pounds. That is, it was. I

888 am not positive of that, but it is close to $1. If I am wrong some one will correct me.

That in its relation to the adjustment within the state, conditions and service, distance and so forth considered was higher relatively than these state rates. That is what I mean.

Q. Per ton per mile it was not higher, was it?

A. I do not know as to that. It is a well established principle in freight rate making that as the distance increases the ratio of the rate decreases. You can handle a ton one thousand miles relatively cheaper than you can handle a similar ton 100 miles.

Q. That is what you mean when you say it was increased relatively, taking into consideration the long haul of the interstate traffic and the short haul of the state traffic: is that what you mean by the term "relatively"?

A. I mean the adjustment of the interstate rates was relatively higher, and I do not know that I can explain it any better than to say that the rates within the state, for equal commercial conditions and service, etc., considered, the interstate adjustment, rather, was very much higher; and even today it is from Little Rock to Memphis relatively higher than the state rates.

Q. Yesterday we had a statement from Mr. Kimbell to the effect that on the Cotton Belt Railway the revenue produced per ton per mile for state freight was about 2½ times that produced by the interstate freight: would that be true on your road?

889 A. I have made no computations on those points.

Q. Assuming that, I suppose there would be no great difference between the Cotton Belt and the Iron Mountain, and assuming there was not, what would you say?

A. There is considerable difference between the Cotton Belt and the Iron Mountain in the matter of resources and facilities and territory it traverses.

Q. Assuming those figures, for the purpose of illustrating the point, that it was 2½ times higher, what would be the relative rate between state and interstate: is that a proper relation or should it be more or should it be less?

A. I would have to figure the rate itself, the commodity upon which it applies, the distance, and the service involved, in order to be able to give you a definite answer.

Q. Those were his statistics on the entire volume of the traffic on his road?

A. I do not know as to that. I have not gone into the statistics feature.

Q. When you say you have to have a proper relation between them, I would like to know just what you would consider a proper relation between interstate and state rates, taking the whole volume of your traffic into consideration?

A. I do not know, without having it figured out exactly——

890 Q. How could you make that relation if you do not know——

A. I do not know without having figured it out exactly, because the conditions with respect to certain articles and commodities are so entirely different. You cannot take the whole volume, as a traffic man, and say just to a fraction just what the relative percentage of adjustment would be. It is impossible to do that.

Q. I am not asking it just to a fraction. I am asking you to give just your best approximation on that.

A. I cannot say as to that unless I make some figures on it.

Q. When you put in the state rates on November 2, 1908, did you make figures then of the relation that one should bear to the other?

A. Yes, sir, I explained how we made them. That we made them with relation to commercial conditions, and the service, by comparison with the figures that prevailed in other states under similar circumstances and conditions; and that as a whole it fitted in.

I don't know that I could explain it any better.

Q. Wasn't it shown down there in Little Rock at that hearing, in which you were a participant, that your rates were out of line with the rates of all the adjoining states?

A. No, sir, it was not. I don't think we would have gotten an injunction if it had been.

891 Q. I am speaking of the hearing before Judge Trieber, on the matter of your tariff of Nov. 2, 1908.

A. My answer applies to that the same.

Q. Did you get an injunction there?
A. No, sir, I understood it was sustained.
Q. You had the rates very materially reduced, didn't you?
A. Not very materially.
Q. You do not think there was any material reduction from your rates of November 2nd?
A. Yes, sir, with respect to certain articles, the re-establishment of the less than carload commodity rate was too low. That was a material reduction.
Q. Isn't there any reduction in the carload traffic rates?
A. Take the fourth class rate, which is the principal classification rating which applies in the distribution of the main part of your tonnage within the state, there was practically no reduction and in some cases a slight advance.
Q. Then these rates you are operating under now, known as "court tariff" is pretty near what you would consider a fair rate, is it?
A. It is a little too low, in my judgment.
Q. Competition makes many of your rates, doesn't it?
A. Unquestionably.
892 Q. When you put in the rate to meet competition, what consideration do you give to the making of that rate?
A. Competition.
Q. Alone?
A. Not necessarily. It is either that we meet the rate that is formulated, or ignore it. You might say there is a potential competition, and not active—such as in the case of River service, if you please.
Q. Do you take into consideration the cost of the service when you are meeting a competitive rate?
A. In a general way, we cannot lose sight of that fact. We figure we do not like to sell our goods at less than cost, and still we do not always know what it costs.
Q. Why don't you know what it costs?
A. No man has ever been able to figure out just what it costs to handle any one particular commodity in relation to the whole traffic handled by a railroad company.
Q. If you meet a rate at a competitive point you fix your rate primarily on the rate your competitor has fixed: on what basis does your competitor fix his rate?
A. There might be a variety of things which would fix it for him. He might make an inordinately low rate on the raw material into a manufacturing point, contingent on the manufactured article going out at a high rate. And, therefore, taking it as a whole, it might be remunerative.
893 Or it might be a low state rate predicated on a high interstate rate, and it might be remunerative.
Q. Don't you have any statistics compiled by which you can get at the cost of handling a given commodity?
A. The cost of handling any given commodity cannot be figured, no, sir.

Q. Can you have statistics compiled giving you generally the cost of transportation?

A. We know, taking the whole of it, all of the articles that the carrier handles, and the cost of the service, and all that sort of thing, it can be figured. But you cannot single out any one of them, and say what it costs.

The conditions might be entirely different today from what they will be tomorrow. We might handle 10,000 tons one mile today and tomorrow 100 tons 10,000 miles.

There might be five times as much of a given commodity one day as another.

It takes the total tonnage, with the total cost of operation, to arrive at what it does cost you to handle all of it.

But you cannot select one article and say what it costs to handle it.

No man has ever yet been able to figure it out.

Q. Then you would make it upon the total tonnage and the total cost of operation, wouldn't you?

A. The total cost of operation unquestionably must govern.

Q. And the relation of your total tonnage to that, I
894 presume?

A. Oh, yes, sir. If you did not handle tons it would not cost you anything.

Q. You do not establish your rates, then, on the relation that the revenue from one rate would bear to that of another?

A. Oh, yes. Classification is made up that way.

Q. Classification is made up that way?

A. Yes, sir, and that is the way the rates are made, with respect to classification.

Certain articles are susceptible to damage; its bulkiness or lack of density, if you please; and the character of the equipment that is required to handle it; and the expedition that is sometimes required. All those things are factors that enter into that.

Q. Those are the factors that determine the rate so far as classification is concerned?

A. Yes, sir, one article compared with another. For instance we would not haul feathers at the same rate we would pig-iron.

Q. You would fix a rate to compensate you for the difference in the weight, the difference in the liability, the difference in the cost of handling, and many other elements of that kind?

A. Yes, sir, according to our best judgment, having in mind that the total result is remunerative.

895 Q. Then the rate is more a relative proposition than it is one of cost of operation, isn't it?

A. No, sir, you cannot say that. You must bear in mind the cost of *of* operation, or you would not be making the rate.

The rate is the price at which we sell transportation; and you must bear in mind, according to the best judgment and experience of men who know, what it costs, otherwise we would not be making a rate. You would not last long if you made it without regard to that.

Q. That would be as to total rates. But I am speaking of the relation of one rate to another.

Take your illustration of iron and feathers: the relation of those would be determined very largely by those other factors rather than by the cost of operation?

A. Oh, yes, there are so many factors that enter into it that it is very difficult to differentiate to a nicety.

Q. Have there been any changes in what you might call the trans-state rates affecting Arkansas, by reason of the tariff of November 2nd, The Pacific Coast and Texas common point rates, and practically all those long haul rates?

A. You mean by "trans-state" rates one state only, say Arkansas, or across the state of Arkansas?

Q. I mean by "trans-state" those that just cross the state and enter only incidentally into these calculations. Take oranges
896 from the Pacific coast that might pass through Arkansas.

A. I don't know that the Arkansas adjustment would have any direct influence upon those rates.

But, for instance, lemons from California to New York, the rate has been advanced 15 cents per hundred pounds. I don't know whether that is due to the adjustment of the Arkansas rate, but I don't think it is. But it is due to just an adjustment in that article.

Q. Take the Texas common point rates: there are many of those shipments passing through Arkansas.

A. Yes, sir, those rates have all been advanced.

Q. But this tariff of November 2, 1908, did not cause any advancement of those rates, did it?

A. Except in the simple influence it might have in answering the desire on the part of the carrier to get more revenue, which they thought necessary for their existence.

Q. In arranging the tariff of November 2, 1908 you did not, then, re-adjust these trans-continental rates, did you?

A. Some of them were re-adjusted. For instance, the rate across the state of Arkansas from Memphis is influenced by your state adjustment.

Q. You are speaking of the rate from Memphis into Arkansas?

A. Yes, sir, and I want to show the influence that has on the rates into Texas.

The rate from Memphis into Arkansas is made from Mem-
897 phis to Texarkana. Texarkana is a base point for Texas.

The rate from Memphis is made arbitrarily, the bridge arbitrary if you please, over the state rate and, therefore, that fixes the rate to Texas. And fixing the rate from Memphis to Texarkana, predicted upon the Arkansas state adjustment, indirectly affects the interstate adjustment into Texas. That is an absolute fact.

Q. Did we not find in the hearing down there in Little Rock that the rates from Memphis into Arkansas are much lower for the same distance, than the rates to Arkansas points?

A. I don't think so. Not so far as the Iron Mountain is concerned.

Q. Did not you admit that in your affidavit there, that in many instances it was true?

A. I do not recall it at the present moment.

Q. Did not you promise to re-adjust a great many of those rates and say that they had been overlooked?

A. Yes, sir, and I will say here, for the benefit of the record, that there was an inordinately low basis of rates from Memphis into Arkansas points, predicated upon a contract and lawsuit brought by the city of Memphis to evict the St. Louis Iron Mountain & Southern Railway from Memphis, and cancel that charter, on account of an alleged discrimination against Memphis in favor of Arkansas jobbing points.

Unfortunately our people at that time did make an adjustment that was favorable to Memphis, because of this unusually
898 low state Commission rate within the State of Arkansas.

That is the history of that.

Q. Then when you raised the Arkansas rates you did not raise those Memphis rates?

A. Just as soon as we could, observing the usual, customary, statutory limit.

Q. I will call your attention to the fact, Mr. Flippen that that limit is 30 days. And this hearing we had in Little Rock was some four or five months after that, and those matters had not been adjusted then.

A. I do not agree with you. They were not adjusted within 30 days, because it requires an interminable amount of work, in checking out combinations, and then the compilation of pen and ink figures, and the submission of that to the printer and the checking of the printer's proof, so that it takes at least 35 or 40 days in order to get it filed down in Washington and in your stations 30 days before its effetcive date.

Sometimes three months will elapse before you can get out a tariff, an ordinary tariff for that matter.

Q. You put in the Arkansas rates without re-adjusting your in- before its effective date.

A. Just as soon as the Arkansas rate was put in effect, the machinery was put in motion to re-adjust the interstate rates.

Q. It takes you a great many months to do that?

899 A. Unquestionably.

Mr. MOORE: I would like him to state in that connection if the inter-line adjustment between carriers had any effect in retarding that work?

A. Naturally. The Interstate Commerce Commission require that we secure the concurrence of our connections, and sometimes an interminable amount of correspondence ensues before we can get that line to file a specific concurrence, as is required by the Interstate Commerce Commission in a joint tariff. And that will sometimes delay the interstate publication.

Mr. HILL:

Q. The practical effect of that was that you put in the tariff of

the Arkansas increased rates on the 2nd of November, 1908 and did not adjust the interstate rates for many months thereafter?

A. I do not say many months. I say it was accomplished as soon as we could get the machinery into motion to bring about that result, because we needed money and we got it as quickly as we could.

Q. I am not standing on the time: the point I am getting at is this: you did put into effect in Arkansas on November 2, 1908, a tariff increasing your rates at least 42%, without at that time any adjustment or re-adjustment of the interstate rates?

A. At that time we put into effect the Arkansas state rates you refer to, I repeat we started our efforts as quickly as possible
900 to re-adjust our interstate rates. And that is the best answer I can make.

Q. You are getting away from my question.

A. I state it was done as quickly as possible.

Q. As a matter of fact, when you did put in the Arkansas rate there was no adjustment or re-adjustment made of the interstate rates at that time?

A. Not co-incident with them. It was impossible to be done then, because of the Interstate Commerce Commission's requirements.

Q. Then, as a matter of fact, there was an increase of the state rates put in without any corresponding increase of interstate rates, even if it were not but for one day?

A. That is admitted in my testimony.

Q. What proportion of the state rates do you consider competitive?

A. Well, that is a most difficult question to answer. I do not know that I could even give you an idea.

Q. I mean, on your line.

A. Nearly every point of any consequence in the state is competitive.

Q. What are you competitive with?

A. What are we competitive with?

Q. What roads?

A. The Rock Island, the Frisco, the Cotton Belt, the L. & A., and some of those minor lines, if you please, some lumber lines
901 for instance.

Q. You would regard all the great lines, like the Rock Island, the Frisco and the Cotton Belt as your competitors in fixing rates?

A. Naturally, it is an influence we cannot ignore.

Q. What do you mean in rate making parlance by "a competitive point?"

A. One served by two or more railroads, or water. In other words, competitive transportation facilities—sometimes it is a wagon.

Q. You have all kinds of competition?

A. Yes, sir.

Q. I believe we showed up in the hearing that there was some wagon competition over in Arkansas County?

A. Yes, sir.

Q. You have had some wagon competition in your coal business in Fort Smith?

A. I do not recall that. There might have been.

Q. Mr. Flippen, when you put into effect this tariff of November 2, 1908, you made it very much higher, did you not, than the tariff that had been in force before the Commission made a tariff?

A. Oh, yes, that speaks for itself.

Q. That tariff that was put in on Nov. 2, 1908 was put in by all of the other roads that got a similar injunction, I believe?

902 A. I don't know just whether they put it in at the same time or not.

Q. The point I am getting — is, it was substantially the same?

A. Yes, sir.

Q. It was put in by the Frisco and the Rock Island and by the Cotton Belt: now is not the relative cost of conducting transportation on each of those roads different?

A. I do not know as to that.

Q. Do you know as a practical traffic man, that the cost on one road is not identical with the cost on the others?

A. It may vary some. I do not know.

Q. Did you not testify a while ago that the conditions on the Cotton Belt might be different and very different from those on the Iron Mountain?

A. I did.

Q. But the rates put in were the same, weren't they?

A. I don't know. We did not check with the Cotton Belt but I presume they were about the same.

Q. It was a uniform scale which all you roads that got the injunction, put in?

A. That is my impression.

Q. And it was issued finally as a joint tariff, wasn't it?

A. I don't know whether it was issued as a joint tariff or not. We got out an individual tariff.

903 Q. That is true, for November 2, 1908; but sometime later, there was a joint tariff issued, is my memory of it: isn't that right?

A. I do not recall whether a joint tariff was put in or not. It may have been.

Q. But whether separate or joint tariffs were put in, uniform rates were gotten out by these different roads, weren't they?

A. That is my impression.

Q. Did these other roads take into consideration the relative rates as you did?

A. I do not know what influences were applied to the making of those rates. I am speaking only of the St. Louis, Iron Mountain & Southern.

Q. You made the tariff so far as the St. Louis Iron Mountain is concerned?

A. I had a good deal to do with it. I did not make the figures in every case.

Q. It was done by sub-ordinates under you?

A. Yes, sir.

Q. Those figures were checked over with the other roads?

A. I think so.

Q. And where agreed upon by all the roads to be the rate to be put into effect——

A. I don't know that there was any agreement.

Q. They were checked over and in effect agreed to be put in
904 by the other roads. That being true, I want to know how you took into consideration the cost of the service?

A. That is as a general proposition, as I thought I had previously explained, it is one you cannot figure out to an actual dollar and cent per ton per hundred pound-. You must go by your knowledge and your intuition and your consideration of the commercial conditions, the service, and by comparison with what the rates are in other states, and what your general results and returns are.

Now a rate of itself on any particular commodity as I previously explained, you cannot tell just whether it is going to be a profitable one to you of itself or not. You must make what you consider a whole schedule of rates, and that according to your best judgment. And as I say, by comparison the cost of the service will bring proper results.

Q. Take your coal schedule; you and the Rock Island are both large coal haulers. When you put in this tariff of November 2, 1908, you and the Rock Island put in the same rates and checked them over with each other. Now did not the question come up between you and the Rock Island as to the relative cost of your road hauling coal or of that road hauling coal?

A. I do not know as to that feature of it. It certainly had considerable consideration in some form or other, but in just what particular form, I do not know.

Q. You have many more coal mines on your lines than the
905 Rock Island Company: could not you naturally haul coal cheaper into Little Rock than the Rock Island could?

A. I don't know that we could.

Q. If you had the volume of traffic you could.

A. We might.

Q. You are taking that cost of service into consideration, you say, as one of the principal elements in fixing rates: how could you with the St. Louis San Francisco and the Rock Island and other roads agree upon the same rates when the relative cost of the service on these roads is different?

A. As I stated, there is nobody we have ever found in the world who can figure what it costs to haul any particular commodity, in reference to the whole traffic we handle.

It is largely a guess as to what it costs to handle any particular commodity. We might be handling coal at a loss and the Rock Island might be handling it at a profit. We must take the whole fabric.

Q. How did the Rock Island and your road reach the same figure for handling coal, when you might be handling it at less profit.

A. From the fact of competitive conditions. We might haul it

110 miles and the Rock Island might haul it only 85 miles, and yet we have a blanket adjustment, because it is a question of living and let live.

906 If this mine over here is 90 miles from the market and this one here is 150 miles from the market, and both of them selling their coal in the same market, there must necessarily be an adjustment of rates that will come pretty near placing one on a parity with the other, or one is going to suffer seriously.

It is not particularly the result from the handling of that coal itself that brings us the return, but it is the development and the perpetuity of this industry, in its consumption of food products, grain and clothes and all those sorts of things. You have men there who will use all those things. It is an endless source of revenue to you, and you must keep it on a parity with the other fellow.

Q. Your road and the Rock Island agreed on a parity of rates so to speak, in the handling of that coal?

A. Not necessarily agreed on it. One fellow would fix the peg and say, "My mine will pay $1.00 a ton." Then I would say, "All right, my mine must pay that amount on my line and I will fix my rate at $1.00 because my mine must live."

Q. That was all figured out before that tariff was issued?

A. Our rates are not all the same by any means. Some one line fixes it and the other line has to meet it. It does not necessarily mean an agreement as to the rate.

Q. Weren't your rates all fixed in this tariff of November 2nd? There was no difference in them, was there?

907 A. That tariff speaks for itself. If they got the same figures in their tariff as we have in our tariff, he might have set the peg and we followed it, or vice versa.

Q. Those pegs were set before the tariff was issued?

A. Sure.

Q. That is the point I am getting at: in the setting of those pegs I want to know what consideration you gave, or the Rock Island gave, to the cost of that service?

A. As I previously explained, general conditions. You cannot tell what it is going to cost on any particular commodity. You must know the whole situation and know you are not making money and, therefore, you have got to get higher rates, and now how high will the business stand. That is the whole story.

Q. That is the way you fix rates?

A. Yes, sir.

Q. How much the traffic will bear?

A. Yes, sir.

Q. That is the real basis of rate making?

A. Unquestionably so, the world over, just as the price of selling goods is fixed.

Q. And the cost of the service has little to do with it

A. It has a great deal to do with it, because if you fix prices at less than it costs to produce it, you make no profit whatever.

Q. I understood you to say you were doing that?

908 A. No sir.

Q. Didn't you say the rates before November 2, 1908 were unremunerative?

A. I thought they were unfair and not altogether remunerative; and they were unfair with reference to competitive conditions.

Q. I took coal to illustrate the point; now take the whole traffic; when you were considering the whole traffic of the Rock Island, and the Rock Island was considering the whole traffic of the St. Louis Iron Mountain & Southern, and you put in those rates of November 2, 1908, what consideration did you give to the cost of the service, and what consideration did the Rock Island give to the cost of the service?

A. They must have considered their returns were so much, and that they handled a certain class and kind of business and the service was so and so; and the preponderance of tons is sometimes one way——

Mr. MOORE: Are you speaking of the Rock Island?

A. I mean the St. Louis Iron Mountain & Southern. Of course I cannot testify as to the Rock Island. There is such an indefinite consideration, as it were, of all of these factors, that you cannot lose sight of any one of them. You cannot, as I have repeatedly said, pick out any one commodity and figure what would be the whole cost of handling that.

909 Q. I understand that. We passed from the coal, which I used as an illustration, to the entire traffic; here is an entire set of rates which you say you and the Rock Island and other roads put out together: how did you arrive at the cost of the service on that, when the cost of the service on these other roads must necessarily vary from the cost of the service on your road?

A. We may have, as I previously stated, set the peg in that case and figured the cost of our service, and being the biggest railroad in the state of Arkansas, say it shall be so and so; and they followed it. That explains that feature of it.

Q. That was all done before the tariffs were put out? That was all considered?

A. You must make your figures before you can issue a tariff.

Q. You and these other railroads I referred to, you did do that? You had your traffic men get together and discuss these figures?

A. We did discuss it. There is no question about that.

Q. It was finally agreed between you and the traffic men controlling that, to put out that tariff of November 2, 1908?

A. I cannot say there was any agreement. Here was the figure we are going to make and the other fellow says, "I will use these figures"—and there you are.

Q. Who set them?

910 A. In certain classes or commodities one man might fix it and then the other fellow may have to meet it. We may have to meet the coal rate on the Jenny Lind, they may have to meet it from Mansfield or some other competitive point on their line.

Redirect examination of B. M. FLIPPEN continued as follows:

By Mr. MOORE:

Q. How soon after the change in the freight rates in November 1908, local to the state of Aransas, did you begin to re-adjust your interstate rates?

A. We began immediately, but a considerable time elapsed before the effective date of the re-adjustment, because of the reasons I stated this morning—the difficulties of the compilation and the delay in publication and the checking of proof, and then the observation of the statutory limit required by the Interstate Commerce Commission. Ordinarily we figure on about 45 to 60 days.

Q. How soon after the change in the state rates did your re-adjustment of interstate rates begin to take effect?

A. Possibly in some cases, from some base points, in two months and some in three months and others a little later.

Q. Just depending, I suppose, upon the amount of preparation that was necessary, and all the correspondence and negotia-
911 tions with your connections?

A. Yes sir. The clerical work and the negotiations with connections for their concurrence and the time for publication, etc.; and checking the figures to see if they were correctly compiled, and so on.

Q. In speaking of the cost of transportation a while ago, on cross examination, you stated that in many instances it would be based on what the traffic would bear; please state what you mean by that statement, and in what sense you used it?

A. I meant by saying that the rates were made upon just what the traffic could bear, considering the competitive conditions. Certain traffic will only bear a certain measure of rate in competition with a similar article or commodity produced in some other state or some other section of the country directly competing with this particular article in a common market of purchase,

For instance, a man making hickory spokes in Arkansas, if you please, is competing with a similar production in Tennessee or perhaps Georgia or possibly Mississippi. Such articles find common market in the points of vehicle manufacture if you please, like South Bend, Indiana, and Chicago, Ill., and Detroit Michigan, or Racine, Wisconsin, and other big wagon and vehicle manufacturing centers.

Now that traffic will only bear a certain rate to enable this industry to thrive on the St. Louis Iron Mountain and South-
912 ern Railway if you please, in competition with similar production in some other section or territory of the country in which the Iron Mountain Railway has no interest; and, therefore, the traffic will only bear so much.

Q. In your efforts you tried to avoid making rates that will be prohibitive to some of the industries upon your line?

A. Absolutely so. If rates were made so as to restrict or prohibit the movement of certain articles, then the general effect upon the development of your traffic and your earnings which is not confined to

that particular product, as it were, but it is the general development of the country in which it is produced, and the contingent qualities or features which bear upon the production of this particular article.

If a man is getting out spokes or hubs or stave bolts, it means wagon haul; it means men in the woods with axes; it means the consumption of grain to feed the oxen; and the teams and all that sort of things.

That is what I mean by "contingent features," all of which contributes to the earnings of the railroad, if not directly then indirectly.

Q. Is the average cost of handling business any indication of the cost of handling any particular commodity or kind of business?

A. That is simply one element. There are various elements that enter into the question of rate making. There is competi-
913 tion; the amount of tonnage involved; the movement of traffic in one direction versus the empty car movement in the other direction. And all those sort of things.

Q. I am not speaking so much about rate making but what I am speaking about is the proposition of cost. The question is, is the average cost of handling the business any indication of the cost of handling any particular commodity or kind of business.

A. As I said this morning, it is absolutely impossible to figure what it costs exactly to handle any particular commodity or article.

It may be figured in its relation to the whole. You cannot segregate it. You may handle feathers and pig-iron or merchandise or groceries or grain or lumber, etc., all of them on the same train. They all pay different rates. One is a very light and bulky article and another is dense. You may haul one car that will carry perhaps 100,000 pounds of revenue paying tonnage, where it might take 3 or 4 cars to carry the same amount of revenue paying tonnage of another article or commodity. Therefore, it is impossible to figure it.

Recross-examination.

By Mr. HILL:

Q. Mr. Flippen, don't you recall that in the affidavit you filed in support of this very tariff of November 2, 1908, in Judge Trieber's court, that in a great many instances where complaint had been made against your rates as discriminating against the state,
914 that you stated or promised that those rates would be remedied by May 1st?

A. Perhaps I did, Judge Hill. I recall that a very strenuous effort was being made to so re-adjust and advance our interstate rates to conform in their relation to the re-adjustment of the state rates, and to get the advance and to get money as quickly as we could.

Q. You do remember that promise, that quite a large number of interstate rates that were complained of, it was promised would be re-adjusted by May 1st?

A. Some of them were adjusted, yes. Some of them were ad-

justed probably thereafter. I remember particularly the rate on cotton seed, if you please, within the state, that complaint was made that the rates interstate were not made relatively with the change in the state rates.

Q. I recall that, but I am speaking of the interstate rates.

A. Therefore, we advanced them 30 to 40%, as soon as we could get to them.

Q. I am speaking of the interstate rates.

A. I am speaking of interstate rates. In the cotton seed rates Little Rock to East St. Louis, an advance of 30 to 40% was made.

Q. I think there was an advance on your intrastate cotton movement after November 2nd.

A. The cotton movement is really not a state proposition, because very little if any of the cotton produced in Arkansas
915 finds ultimate lodgment or destination within the state. It is interstate.

It is generally handled on what we call "milling in transit" or "in transit privilege" adjustment—concentration if you please.

It pays a certain rate in and then when it moves out to its ultimate destination it is refunded back to a normal basis, protecting through rate from the point of origin to ultimate destination, Boston, Liverpool, or otherwise.

Q. You do know that up to May 1st, following the adjustment of state rates in November, the interstate rates were not adjusted?

A. A great many of them, perhaps, were not. For instance, if you change the rates to Memphis it carries with it automatically a re-adjustment from Cairo and St. Louis. And the rates from New Orleans into Arkansas are the same as from St. Louis into Arkansas. The rates from Kansas City, if you please, into Arkansas are made with relation to the rates from the Mississippi River basing points, or the Mississippi River crossings.

The whole fabric is involved; and, therefore, there is a world of work and millions of figures sometimes involved; and it takes months to do this work.

At times you cannot get the necessary clerical help. We are handicapped in that respect today, to re-adjust and fix these
916 figures in their adjustment, so as to preserve the parity as between one community and another doing business into that state.

Q. I stated that it is claimed by your side that the rates of November 2, 1908 are about 42% higher than the Commission's rates: I will ask you if in re-adjusting the interstate rates you raised them 42% higher than the pre-existing rates.

A. I do not think the measure of the advance in the interstate rates was the same percentage, because of the fact that the adjustment relatively was already very much higher.

The rates within the state of Arkansas under the Commission's tariff were inordinately low; and, therefore, when we came to the point of advancing the interstate rates with relation to the state rates we did not have to observe the same percentage.

Q. About what percentage of increase did you put upon the interstate rates?

A. It varied according to the commodity involved.

Q. Of course, it always does that, but I am speaking generally of about what would be the average increase?

A. I should say from 10 to 15%, sir.

Q. In making that estimated percentage you are not taking into consideration the trans-state schedule of which we were speaking this morning?

A. I am speaking about interstate rates with origin and destination in the state of Arkansas.

917 Q. Origin or destination, I suppose you mean?

A. Not necessarily. Both directions. For instance, we raised our lumber rates interstate from Arkansas to all interstate destinations, from 2 to 7 cents per hundred pounds, which we have been able to sustain as reasonable before the Interstate Commerce Commission.

Q. Isn't it a fact that many of these re-adjustments of interstate rates were produced by complaints of shippers in a number of affidavits filed in the Federal courts down there, complaining that your rates were discriminating against the state?

A. Pardon me, but if I understand your question you say a great many of the interstate rates were reduced?

Q. No, I said re-adjusted, following the tariff of November 2, 1908, this re-adjustment of the state and the interstate rates we have been speaking of, is what I am calling attention to.

Now, isn't it a fact that the re-adjustment of the interstate rates was largely brought about by the complaints of shippers, who complained that your interstate rates were discriminatory, and that many of those complaints were in the form of affidavits so charging, and filed in the Federal court at Little Rock?

A. No, sir, the adjustment, with one or two exceptions, I recall particularly the cotton seed re-adjustment of the interstate
918 rates, was from Arkansas to East St. Louis, that had been overlooked by us.

There was a blanket rate in there and it was pointed out in one of the affidavits, that it was discriminatory against the state adjustment; we had lost sight of that.

We have from 7,000 to 8,000 live tariffs on our system. It is a vast amount of work to investigate and analyze and keep in touch with these various adjustments.

Until that affidavit was filed with respect to that particular commodity, and one or two others I recall, those were not re-adjusted. Otherwise the general re-adjustment was made to preserve the parity between the state and the interstate rates.

Q. Were not many of these re-adjustments brought about by that situation?

A. No, sir, I stated that I did not recall but two or three.

Q. What do you recall besides the cotton seed?

A. I recall the re-adjustment of rates from Springfield, Missouri to Local points on the so-called White River branch.

Q. Don't you recall the rates were re-adjusted from Shreveport and Monroe, Louisiana, brought about in the same way?

A. No, sir, I do not. We have no interest in Shreveport. Our rails do not reach that point. They do reach Monroe.

919 Wasn't there a serious complaint about your discrimination in rates to Monroe, and didn't you promise in your affidavit to re-adjust those?

A. Yes, sir, and it has been done. The advance from Monroe to Arkansas points is predicated on a certain percentage, mileage considered, then your present court rate in the state of Arkansas, which we considered fair as between the two communities serving a common purchasing interest.

Q. You adjusted your lumber rate on account of the affidavit and complaint filed?

A. I think so.

Q. And on canned goods also, didn't you?

A. There was one canned goods rate from one point of production, I think on the Kansas City Southern, which was shown to be higher from that point to Little Rock than from that point to Memphis, and we re-adjusted that.

Q. You re-adjusted the brick rates so far as it affected Coffeyville.

A. We advanced the Coffeyville rates very materially.

Q. That was not done until the affidavits were filed, was it, Mr. Flippen?

A. That is perhaps another instance where the affidavit called to our attention the alleged discrimination as between the state and the interstate rates.

Q. Was the hay rate another one re-adjusted? Do you recall that?

920 A. I do not know that it was. I don't think it was.

Q. Do you recall the rice rates from Cotton Belt points were shut out from all points on your line?

A. I do not recall there was any re-adjustment made, although there was some complaint made of them.

Q. Didn't you promise in your affidavit that you would so re-adjust the rates as to let the rice come in there?

A. I don't think so. We do not originate the rice on our line.

Q. I know, it is on the Cotton Belt.

A. Yes, sir, and the proposition would naturally come from them.

Q. None of these various adjustments I have spoken of, that originated in the complaints filed in the court there, were brought about until May or later, were they?

A. I do not recall the date effective. The tariff will show that. I know it was done just as soon as possible.

Q. Before you put into effect the tariff of November 2, 1908 you had no data as between the intrastate and interstate freight costs, had you, upon which to base that tariff?

A. We had the evidence as our guide, that had been submitted in the proceedings in the court at St. Paul.

Q. Did you try to arrange that tariff of November 2, 1908 upon the basis that the state freight should bear at 100% additional extra cost?

A. As near as we could, according to our judgment, yes—and yet it did not do it, as shown by subsequent results.

921 Q. There is a difference of opinion about that, how much it did do, Mr. Flippen:

You had no separation of expenses, state and interstate, actual separation I mean, as your guide in framing that tariff?

A. Except as I say, the general conditions, and the basis we have there as our guide.

We cannot tell what it is going to cost us to handle a pound of freight until we have handled it.

Redirect examination.

By Mr. J. M. MOORE:

Q. Mr. Flippen, were these re-adjustments Judge Hill refers to, in connection with the affidavits filed in the hearing mentioned by him, in line with the policy under which the railroad was acting in making re-adjustments of interstate rates?

A. Unquestionably so.

Q. Would they have been made as soon as discovered, if complaints had not been made?

A. There is no question about that. The re-adjustment of rates is continued from time to time. They are made to promote the commercial conditions and competitive conditions and all that sort of thing.

922 While it is pointed out by one interest that he cannot live, in some other section or locality the question arises in the traffic man's mind, whether he can engage in this business and enable that man to live, and what will be the direct benefit to the traffic, and if it can enable him to live and benefit the locality, it is perhaps followed up by a re-adjustment; sometimes up and sometimes down.

The witness is here excused.

923 CHARLES L. STONE, a witness of lawful age being duly produced, sworn and examined on the part of the Complainant, testified as follows:

Direct examination.

By Mr. J. M. MOORE:

Q. Please state your full name, residence and occupation.

A. Charles L. Stone. My residence is here in St. Louis. My occupation is Passenger Traffic Manager of the Missouri Pacific and St. Louis, Iron Mountain & Southern Railway.

Q. How long have you occupied that position?

A. Since August 1, 1907.

Q. How long have you been in that department of work?

A. Twenty-five years.

Q. Do you recall that time when the statutory passenger rate of two cents per mile went into effect in Arkansas?

A. Yes, sir.

Q. About what date was that?

A. April 9, 1907.

Q. Was any action taken by your department in regard to interstate rates following the change in the local rates under the statute?

A. When the local rate in Arkansas was reduced from three cents to two cents a mile, as soon as the two cents tariffs were prepared within the state our rate force immediately began to work on
924 the interstate tariffs and put them in effect as soon as possible, using the two cent rate as the basis in the state of Arkansas.

Q. Now when was the rate of two cents on the statute abandoned and another rate put in effect?

A. It was abandoned on Oct. 19, 1908.

Q. What rate was put in then?

A. Three cents; wherever we could and at points where we had to meet the competition of other lines which had less rates in, if it was to the interest of the company to meet those rates we did so. We viewed that as a business proposition.

Q. I was going to ask you if you took any action looking to the re-adjustment of the interstate rates after you had resumed the three cent local rates in Arkansas?

A. After the tariffs were compiled and checked on the three cent rate in Arkansas our rate force immediately commenced to compile the interstate tariffs, using the three cent basis in Arkansas.

Q. The St. Louis, Iron Mountain & Southern Railway Company maintains commercial foreign agencies outside of the state of Arkansas, doesn't it?

A. Yes, sir.

Q. Does the work that is performed by those agents have any effect upon the intrastate passenger business of the state of Arkansas?

A. Yes, sir.

Q. Please state what effect it has.

925 A. These outside men of ours are posted as to the local conditions in all of the states through which the St. Louis, Iron Mountain & Southern run and naturally having that information before them they know all about Arkansas.

It is their business not only to solicit competitive traffic between any two points we can touch, but it is also their duty to build up our local traffic wherever they can, and our representatives at all points where we can handle traffic to or through Arkansas make just as much effort to get that traffic as they do any other.

They will frequently make arrangements in New York, for instance, for the movement of intrastate traffic in Arkansas, nothwithstanding it may not be competitive.

Cross-examination.

By Mr. HILL:

Q. I wish you would explain how they make arrangements in New York for the movement of intrastate traffic in Arkansas?

A. Judge, we handle quite a good many theatrical parties that are contracted in New York. Our representative- there call upon these

people who control this traffic and solicit it over our own line, the same as do the representatives of the other lines that are competitive with us.

Our people in New York are given by these theatrical people what is known as an "Itinerary", showing their movements. For instance, a company may jump from Memphis to Little Rock.
926 They buy their tickets in Memphis for Little Rock. When they are ready to leave Little Rock they purchase their ticket to Pine Bluff and at Pine Bluff they purchase their ticket to Hot Springs, via Little Rock, and they may go from Hot Springs to Fort Smith or they may go from Hot Springs to Texarkana, Arkansas.

Q. With the exception of those movements from Little Rock to Pine Bluff and from Pine Bluff to Hot Springs, those are all interstate movements that you have been giving instances of?

A. The only interstate movement I gave an instance of, was the movement from Memphis to Little Rock. It is not an interstate movement from Pine Bluff or from Little Rock to Hot Springs or from Hot Springs to Fort Smith. Or from Little Rock to Texarakana.

Q. How about Fort Smith? Don't you carry them there as to an interstate point?

A. Fort Smith is an interstate point with us on some of our trains. But on others it is not.

Q. You cannot go from Fort Smith to Texarkana without it being an interstate movement, can you?

A. It just depends on how we handle the traffic over the Fort Smith road, yes, sir.

Q. Give us some other instances besides theatrical troupes where these outside commercial agencies affected intrastate passenger traffic.

A. Our representative in New York today is negotiating
927 with the manufacturers club of Philadelphia, for a trip from Philadelphia to the City of Mexico. They will use our road from St. Louis to Texarkana and return. He is endeavoring at the present time to arrange for a side trip from Benton over to Hot Springs and return.

Q. Would that be an intrastate trip from Benton to Hot Springs.

A. Yes, sir, I consider that an intrastate trip from Benton to Hot Springs and return.

Q. Is that the way that traffic would be handled? Would not they sell a coupon in New York for that as a side trip?

A. No, sir, that would not be handled that way at all.

Q. How would it be handled?

A. It would be handled at Benton. We would instruct our agent to have so many tickets ready on the arrival of that train at Benton and they would pay for them there.

Q. Making it an intrastate movement at Benton?

A. Yes, sir. All our representatives solicit intrastate business in Arkansas, as well as all other states through which we pass. They are instructed to do that. It is to our interest to do that.

We issue and distribute a book called "The Arkansas Home

Builder." That book is sent to every agent and every outside representative of the Missouri Pacific and St. Louis, Iron Mountain & Southern system. They are supposed to be thoroughly posted on everything in that book. And if people come to them for information with reference to anything in Arkansas they are supposed to be able to give it to them—and I think they are.

928

Q. Isn't it a fact that the great bulk of business produced by these commercial agencies is interstate business?

A. Yes, sir, the majority of it is.

Q. Very much more than the majority, isn't it? What percentage, would you say.

A. That would be rather hard to say. I cannot tell you that off-hand.

Q. The amount of intrastate business directly affected by them would be extremely small, wouldn't it from the very nature of it?

A. No, sir, I would not say it would be extremely small but I would not say it would be as large as the interstate movement.

Redirect examination.

By Mr. MOORE:

Q. Do your outside agencies promote immigration into Arkansas, and the organization of parties to visit the state?

A. Yes, sir, we have an immigration agent whose sole duty is to do everything he possibly can to promote immigration to all of the states through which we pass.

Q. These agents you spoke of in your examination in chief, how do you denominate them?

929

A. You mean our outside men?

Q. Yes, your outside men. Do they promote the formation of parties of that sort for the purpose of visiting the state?

A. Yes, sir.

Q. Do you know whether persons in parties of that sort do any local traveling when . get into the state, constituting intrastate business?

A. Of course they do. A man is not going to Arkansas to settle and buy land, and simply look at one piece of land.* He is going to go over the whole state. He is not a very good business man if he does not, and our people encourage that.

We are opening up for Mr. John C. Spry of Chicago, a tract of 35,000 acres of land at Arkansas City, Mr. Spry cannot sell that land very readily without the agency of the St. Louis Iron Mountain & Southern Railway Company. And the assistance that our outside men give him is without any cost to him. They pay their own expenses. We advertise his land and he does not pay us a copper red cent for it.

We are doing that because we want the unoccupied land on the line of our railroad in Arkansas, as well as in other states, occupied; thereby creating business as well as passenger traffic.

Q. And in that way you build up the local business?

A. Yes, sir, in that way we build up the local business.

Q. If an individual or a group of individuals should
930 go to that section for the purpose of looking at the land, with a view of determining after they looked at it whether they would want to migrate there or not, is it your experience that those people make intrastate trips—that is, trips within the state?

A. I cannot say after they have decided to locate at one place, but I do say positively——

Q. You did not understand my question: people going there to look at the country for the purpose of determining whether they will locate there or not, do they travel around locally and make intrastate trips for the purpose of determining whether they will locate there or not?

A. They most certainly do. We are very much interested in rice land in Arkansas. They go over our line and look at the land and they go upon the Cotton Belt—I do not know about them going on the Rock Island—but the Cotton Belt began to exploit the rice culture development in Arkansas before we did.

Recross-examination.

By Mr. HILL:

Q. One other matter, Mr. Stone: you testified that immediately upon going into effect of the 2 cent rate you ordered your interstate tariff prepared; and upon the going into effect of the three cent rate you did that: you mean you prepared the interstate tariff that affected the traffic in Arkansas, didn't you?

931 A. Yes, sir.

Q. That is, interstate points like Fort Smith?

A. Yes, sir, and Missouri and everything.

You understand, Judge, we cannot get out our interstate tariff as quickly as we can our intrastate tariff.

Q. I understand.

A. For the simple reason there are so many requirements of the Interstate Commerce Commission that we sometimes think are unnecessary, and do not do a particle of good; but it means a world of work.

You take for instance the Texas rate sheet, and I remember when that used to be just that size (indicating). And it was no hardship to compile it.

For instance, a rate was shown from Dallas, Texas, to St. Louis, Missouri; and it just read "St. Louis". Now we have to show in there, in order to comply with "the act to regulate commerce" every route over which that ticket can be sold; and if the route is not in there——

Q. I am not getting into that. That goes into the question of expenses, and your general expense account shows that?

But here is what I want to get at, that you did not increase your general interstate passenger rates otherwise than they were affected in Arkansas by the change in the laws there?

A. We changed them as soon as we could and changed the
932 interstate rates from all points that were affected by the law there as soon as we could.

Q. I mean, you did not change your interstate rate from the City of Mexico to the City of St. Louis, on account of this intrastate two cent rate in Arkansas?

A. Yes, sir.

Q. How did the change come in there?

A. That is a long story.

Q. Make it as short as you can, but explain it to us.

A. There is no use my going into this explanation unless you are going to listen, to it.

Q. I am listening to it.

A. Now, there is a map (witness here produces map) that shows the territory which is affected by the Arkansas Legislation.

The rate per mile in the state of Arkansas was reduced by legislative action from three cents to two cents per mile, on April 9, 1907.

This had the effect of making the following reductions between border points in the state of Arkansas:

Between Moark on the north and Texarkana on the south, the fare was reduced from $9.11 to $6.08; making a reduction of $3.03 in the intrastate fare.

Between Bridge Junction on the east and Fort Smith on the west, the fare was reduced from $8.60 to $5.73; or a reduction of $2.87.

933 Between Bridge Junction on the east and Texarkana on the southwest, the fare was reduced from $8.25 to $5.50; or a reduction of $2.75.

Between Bridge Junction on the east and Mammoth Springs on the north, the fare was reduced from $4.17 to $2.80; or a net reduction of $1.37.

These reductions had the effect of reducing interstate rates between the territory as outlined on this map, between the points located in the territory marked "1" and the points located in the territory marked "8" (that is Mexico); a reduction of the local fares between Moark and Texarkana made an average reduction of from $2.25 to $3.03 on each ticket passing over the lines of the lines of the St. Louis Iron Mountain & Southern Railway between Moark and Texarkana.

The territory marked "8" includes Texas and Mexico (it is marked blue on the map).

Between points located in territory marked "3" "4" and "5" on the map, that is routed through the Memphis gateway, the reduction of the fare on the Arkansas lines would average from $1.90 to $2.87 for each passenger carried across the state of Arkansas.

Between the points shown in the territories marked "2", "3" and "4" on the east and the territory marked "8" on the southwest, when routed via Memphis and Texarkana, the average reduction in the revenue accruing to the Arkansas lines was from $1.75 to

934 $2.75 for each passenger carried between Memphis and Texarkana.

Between the territory marked "4" and "5" on the southeast; and the territory marked "6" on the northwest, the average reduc-

tion brought about by the change in the fares in the State of Arkansas, was from $1 to $1.37 on each ticket.

In other words, to make this perfectly plain, all of this coloring (indicating map) shows the effect that the reduction in the local passenger fares in the state of Arkansas from three cents to two cents per mile, had on interstate traffic.

We cannot any more reduce the passenger fare in Arkansas from three cents to two cents per mile and not change our interstate rates—well, I don't know just how to express it, but we cannot do it. It is impracticable and almost an impossibility.

The map referred to is marked "Charles L. Stone Exhibit 24."

Said exhibit is in the words and figures following to-wit:

For Exhibit 24, see Volume 8, page 5333.

935 Q. When you put these rates back to three cents, did you increase all those interstate rates correspondingly?

A. If we had the absolute say of it we did, yes, sir.

But in this territory that is foreign to us, we have to call the attention of the other roads to the increase in the rates in Arkansas; and if that had the effect, which it did have of reducing the rates, of course when the rate was advanced they made a corresponding advance in their interstate fares. Have you that down?

Q. Yes. You have all the interstate rates restored to their former level?

A. Practically all of them.

Q. How about the California rates?

A. The California rates were not affected very much by the change of rates in Arkansas, because the Illinois Central carries the same rate from St. Louis and New Orleans and that, of course, affects everything on our road. And we have to carry the St. Louis rate down. In other words, Judge —— I don't know whether you understand this or not?

Q. No, I do not understand it.

A. I will try to explain it to you.

The Southern Pacific Railway says, we will have a certain rate out of New Orleans, and the Illinois Central Railway says, "we will have a certain rate out of St. Louis." And Illinois Central will sell a ticket out of New Orleans and then over the Southern Pacific to California common points.

936 Then the Illinois Central will sell a ticket from New Orleans via St. Louis to California common points.

You see they get the traffic both ways and having the same rate from St. Louis and New Orleans to the common points of California, that of course fixes the rates for us.

Mr. MOORE:

Q. That is competition?

A. Yes, sir, that is competition.

Mr. HILL:

Q. There has been no change then in your trans-continental rates by reason of the three cent or the two cent Arkansas fare?

A. No, sir, except as I have shown you.

Q. That is to the City of Mexico?

A. Yes, sir, to the City of Mexico and the Northwest.

Q. What do you include in the "northwest"? Do you mean north of San Francisco?

A. This territory up here (indicating on map) Montana, Idaho, Wyoming, Washington, Oregon, North Dakota, South Dakota, Minnesota and so on.

Q. The territory north of San Francisco. It would not include any California points?

A. No, sir, for the reasons I have just mentioned.

Q. On these long trans-continental tickets you have been talking about to Mexico and so on, what is the average price per mile on those tickets?

A. I think it figures a little over two cents a mile in each
937 direction.

Q. Aren't you advertising a $47 rate to the City of Mexico and return now?

A. I do not know whether we are or not, Judge. But if we are, it is the home seekers rate. Do you know what makes the rate from St. Louis to Mexico?

Q. No, sir, I do not.

A. I can tell you. It is the Ward line of steamers from New York to Vera Cruz, and from Vera Cruz via the Mexican Railway to the City of Mexico.

We compete for European travel out of the City of Mexico, and the Mexican Railway is the first start of the competition, and then the Ward line.

Q. What is the rate from the City of St. Louis to the city of Mexico?

A. Seventy odd dollars to City of Mexico and return. I can get that and give it to you exactly. I can get it as soon as I could get hold of a telephone.

Q. Aren't you in the habit of selling the $47 ticket from the City of St. Louis to the City of Mexico and return?

A. We have been doing it for about one and one-half years past only on Home Seeker excursion dates. But it was forced upon us. We did not want to do it.

Q. But you are doing it?

A. We are doing it to meet competition.

Q. How much would that amount to per mile?

938 —. That would be about one and one-half cents per mile.

Q. What is your California rate?

A. $102.00.

Q. Round trip?

A. Yes, sir.

Q. About what is that in cents per mile?

A. That figures I should say about one and one-half cents.

Q. Don't you have a much cheaper rate than that to California and return?

A. We have a colonist's rate, over there.

Q. I am not referring to that: I mean conventions, and excursions and things of that kind?

A. Yes, sir, they make special rates for them from time to time.

Q. They are in force practically all the time, aren't they out there?

A. Whenever they have a convention.

Q. That is perennial out there, isn't it?

A. You must remember that the Missouri & Pacific and the St. Louis Iron Mountain & Southern have nothing whatever to do with making those rates.

Q. I am not asking who made them, but I am asking what you are charging.

A. Yes, sir, we are charging the same as the other roads.
939 But if we do not meet the competition of the other roads we would not have any of the traffic.

Q. I should not think you would want any of it at that rate.

A. Well, we are not spending any great amount of money getting it.

Q. Do not your commercial agents get you any of that traffic?

A. We are not in a position to compete for California traffic.

Q. Don't you carry an "ad" in the magazines, about the beautiful route you have through Arkansas and down there, to attract California excursionists?

A. No, sir, we do not. If you will not put it in the record, I will tell you that we have not a beautiful route to California.

Q. If you have a big convention out there, don't you send your commercial agents to try to get that convention and try to carry those people out there.

A. Our men make an effort, but they have never been successful, Judge.

Q. You are spending a good deal of money you ought not to spend trying to do that?

A. No, sir, we are not spending a great deal of money. I wish to correct that impression in your mind right now.

We cannot compete for that California traffic: we have not the service. The service for California traffic is through the
940 Chicago gateway; our schedules are slower than the Chicago route and it is almost a hopeless task to try to get any of that traffic, and we do not try. If a man comes along and wants to ride we will sell him a ticket.

Mr. Moore:

Q. But you are not going after it?

A. No, sir, we are not going after it.

Mr. Hill:

Q. About all your interstate traffic across Arkansas is at about 1½ cents per mile, approximately, isn't it?

A. On what kind of traffic?

Q. Your interstate traffic?

A. No, sir.

Q. About what is it?

A. I cannot answer that off-hand. It would require some figuring.

Q. It would be less than two cents?

A. We have various kinds of traffic passing over that line. We have home seekers and we have tourists' rates to Texas, that is based on about 2 cents a mile.

Q. Isn't the average of interstate traffic over the state of Arkansas about two cents?

A. I should say it would average about two cents.

Q. Do you think your interstate passenger business makes you any money?

A. I would question very much if there is any money made by a railroad in the passenger traffic.

941 Q. How about interstate traffic as compared with state?

A. Are you referring to Arkansas?

Q. Yes, and generally.

A. Well, our intrastate traffic in Arkansas is much more than the interstate.

Q. Much more what?

A. We get much more revenue out of it.

Q. It is very much more profitable, isn't it?

A. I should say so, yes.

Q. It is much more profitable at two cents, isn't it?

A. No, sir.

Q. Are you sure about that?

A. I am pretty sure it is not.

Q. Did you ever compile any figures on that?

A. No, sir, we never compile any statistics on that in our office at all.

Q. What does your "Commissioner of statistics" do?

A. He compiles statistics on various subjects, as they are requested.

Q. Has he ever compiled any statistics on this subject?

A. No, sir, he has not.

Q. Now, Mr. Stone, you say the reduction from three cents to two cents per mile reduces the revenue on all traffic crossing the state of Arkansas to Mexico and those southern points from $3.00 to $4.00 a passenger—I believe those were your figures?

942 A. Yes, sir.

Q. If all your travel across there was at the rate of less than two cents a mile, how could that occur? You testify now that the average price was not exceeding two cents per mile, and when it gets down that the state rate is reduced only to that amount, how can you figure that?

A. There is a certain traffic that moves to Mexico that pays a higher rate. There is a lot of one-way traffic to Mexico, that pays a higher rate.

Q. It is that one-way traffic you are referring to where there was this increase, was it?

A. Yes, sir, the reduction in the rate through Arkansas—I am not sure—I would have to look that up to be positive about it to tell you what reduction it made in the cheap rates.

Q. It did not make any difference in the cheap rates where the level was two cents and under?

A. I don't know. I will have to look that up.

Q. It could not. You can see it would not make any reduction under your statement, if it were two cents and under.

A. It is pretty hard to say just what effect this reduction in the state rates would have on all classes of rates. I would rather look that up than answer you off-hand about it.

Q. If that through rate were more than two cents you would have the passengers stopping off on the border and buying other tickets.

943 A. If the combination were in their favor they would probably do that.

Q. Yes, if they knew it they probably would.

So I would like you to show how that has affected your revenue in that way. Where this through rate was 2 cents and less, how reducing it from three cents to two cents is going to cut it down from $3.00 to $4.00 on each ticket.

A. I can get that information for you and if you tell me exactly what you want I will tell you and get you the whole thing.

Q. I just want you to answer that one question.

A. I cannot answer it off-hand. I would have to look at the tariff and see what effect it had and why the rate was made.

Recross examination.

By Mr. MOORE:

Q. Mr. Stone, I believe you stated the interstate rates would average two cents through Arkansas; isn't that what you stated?

A. On certain classes of traffic, yes, sir.

Q. Aren't you mistaken about that? Is not the average of all business in excess of two cents?

A. In Arkansas?

Q. Yes.

944 A. Yes, sir, because as I explained just a minute ago, Judge, we have a lot of one-way business that moves at a higher rate; and the cases Judge Hill cited are for instance home seekers' excursions to points in Texas and to points in Mexico and we also sell a home seekers' excursion to points in Arkansas.

Q. When you spoke of the lower rate you are speaking of special rates according to trans-state travel?

A. Yes, sir, special rates like home seekers' rate in effect on the first and third Tuesday- in each month.

Q. But you do not mean to say that the average interstate rate is lower than two cents?

A. No, sir. The special business I referred to, the rates he asked me about.

Q. Do you know or are you able to state what the average rate is on interstate business in Arkansas?

A. In Arkansas, no, sir. I have never seen the figures.

Q. But you will say it is above two cents. Isn't it considerably above two cents?
A. Yes, sir, I think it is.

Recross examination.

By Mr. HILL:

Q. I see from statement 3 to Exhibit 3 to Mr. Johnson's testimony that all passengers carried in Arkansas yielded a revenue of $1,405,-012.41; and that you carried 73,842,620 passengers one mile.

Now computation will show that that was at the rate of 1.8
945 cents I think; isn't that a fact?

Mr. MOORE: Judge, for what date is that?
Mr. HILL: It is your six months' period.
Mr. MOORE: That is for the last half of 1907, when the two cent rate was in effect?
Mr. HILL: Yes. When you are carrying them for 1.8 cents.

Q. Isn't that correct Mr. Stone?
A. I have never seen that figure but I suppose it is correct.
Mr. HILL: I will ask Mr. Johnson if that is not correct?
Mr. JOHNSON: Those are the figures and it is less than two cents. It is 1.865 cents.
Mr. MOORE: That is during the time the two cent rate was in effect?
A. Mr. JOHNSON: Yes, sir.

946 CHARLTON MESSICK, a witness of lawful age being duly produced, sworn and examined on the part of the complainants, testified as follows:

Direct examination.

By Mr. J. M. MOORE:

Q. What is your name?
A. Charlton Messick.
Q. What is your position?
947 A. Freight and passenger accountant of the St. Louis, Southwestern Railway Company.
Q. Have you a time card of the St. Louis, Southwestern Railway Company, which was in force in October, 1908?
A. Yes, sir.
Q. Will you file it as an exhibit to your testimony?
A. Yes, sir.

Time-card referred to is marked "Charlton Messick Exhibit 25." Said exhibit is in the words and figures following to-wit:
For Exhibit 25, see Volume 8, page 5335.

948 F. P. JOHNSON, a witness of lawful age, was recalled and testified as follows:

Direct examination.

By Mr. MOORE:

Q. You testified on a former examination as to the manner of entering the price of cross ties in the account called "Cross Tie Account," and also as to the manner of charging the cross ties out as they were used:

Please state if you have made any examination since you testified and if the statement you then gave was correct and if not correct it, please.

A. I will say that we have made further examination of the subject of cross ties and I would like to correct the testimony in connection with the pooling arrangement.

I find that the ties are delivered to the company on the right of way, just as they are purchased and these ties are billed against the various operating divisions upon the actual cost of the tie.

The pooling arrangement statement in the original testimony is only so far as the incidental expense of the tie department is concerned.

By that I mean, that the operating divisions in Arkansas are charged with the actual cost of the tie plus an arbitrary percentage of the tie department expense.

Q. You were mistaken, then, in stating that the pooling arrangement is the average price?

A. It is not an average price of all the ties purchased; but
949 the ties used in Arkansas are charged out at the actual cost of the tie to the company.

Cross-examination.

By Mr. J. M. HILL:

Q. You testified heretofore as follows:

"The cost of these ties is determined without regard to where they are purchased. What I mean by that is, if we buy ties in Arkansas those ties may be used in Missouri. If we buy ties in Missouri they may be used in Arkansas. Now, the cost of all ties is figured to an average cost."

As I understand your statement today, that is incorrect?

A. Yes, sir.

Q. You further testified that:

"The average price, for instance of white oak ties, which were principally used at that particular time (October 1907) was fixed at 54 cents. To that was added the various items of expenses incurred by the Company in handling those ties, such as inspection, cost of loading, salaries of our tie and timber department, are all added to the cost of this tie. The result was that on the Arkansas Division in 1907 the average cost was 59 cents per tie. Now, that average cost might vary slightly from month to month during any of those six months."

Now that is incorrect, is it?

A. No, sir, the average price per tie on the Arkansas Division in October, 1907, was 54 cents, and the incidental expense in that particular month, that is, the Arkansas Division's proportion of the system expenses, brought that price up to 59 cents. So far as the price is concerned, it is correct.

950 Q. The price you have given here is correct, but the method of arriving at that price is incorrect; is that it?

A. Yes, sir. I will say this: ties for the Missouri Pacific System are handled by our maintenance of way department, and a sub-department in that operating department, called the cross tie department.

In making the investigation they said, that was the way they arrived at that price; that it was an average price; and that the cross-tie department expense was pooled among the various departments and added to the actual cost of ties.

In going into the matter further we found the actual cost of the ties was billed against the various departments, and the cost of the ties is not pooled. It is merely a miscellaneous expense, that is pooled.

In the month of October, 1907, the price of 54c. was what the Arkansas Division actually paid for the ties that were delivered to them.

Q. And with this added expense it made it 59c.

A. Yes, sir.

Q. You stick to your figures as being right, but it is merely a wrong method of arriving at it?

A. That is it. Well, the figures were quoted to us and they are still correct; but the basis of arriving at the 54c., as explained in the original testimony, is wrong. That 54c. is the actual cost of the tie; it is not the average price.

951 Q. Do you mean that all the ties on the Arkansas Division were 54c. or 59c.?

A. I mean the ties used on the Arkansas Division——

Q. What is the Arkansas Division?

A. That is an operating division, and it happens to be located entirely in the state of Arkansas. It runs from Hoxie to Texarkana; McGehee to Little Rock; and from Gurdon to El Durado.

Q. You made this statement about the prices of 54c., as I understand it here, was a general price in Arkansas; and later you made the 59c. as applicable to the Arkansas Division. "The average price, for instance of white oak ties, which were principally used at that particular time (October, 1907) was fixed at 54 cents. To that was added the various items of expenses incurred by the Company in handling those ties, such as inspection, cost of loading, salaries of our tie and timber department, are all added to the cost of this tie. The result was that on the Arkansas Division in 1907 the average cost was 59 cents per tie. Now, that average cost might vary slightly from month to month during any of those six months."

Now what was the cost per tie in Arkansas during that month?

A. That I cannot tell you. We were simply making an investigation of the Arkansas Division and I got that item of 59c., just for that one month. The price in the state of Arkansas would vary upon

the different operating divisions and during the different months of that period.

952 Redirect examination.

By Mr. MOORE:

Q. And 54c. was the average price during the period covered by your statement?

A. No, sir, 54c. was the actual price for the Arkansas Division for the month of October.

Q. What I mean is this: if there was any fluctuation during the month, that covers the actual average price?

A. Yes, sir.

953 HUBERT ROTH, recalled, testified as follows:

Direct examination.

By Mr. MOORE:

Q. I hand you a paper which is marked "statement of transtate, interstate and intrastate freight, handled during the month of October, 1907:"

Was that statement compiled by you or under your directions?

A. Yes, sir.

Q. And is it a correct statement of the operations represented on the statement, during that period?

A. Yes, sir, I think it is as correct as figures of that kind can possibly be. It is correct with the exception of possibly clerical errors.

Q. Will you file that statement as Exhibit 26 to your testimony?

A. Yes, sir.

The paper referred to is marked "Hubert Roth Exhibit 26."

Said exhibit is in the words and figures following to-wit:

For Exhibit 26, see Volume 8, page 5350.

954 Cross-examination.

By Mr. HILL:

Q. You compiled this statement yourself?

A. It was compiled under my direction.

Q. Will you vouch for it as being absolutely correct?

A. No, sir. It is reasonably correct.

Q. What do you mean by that?

A. I mean that I cannot vouch for clerical errors. Every care was taken to have those figures correct.

Q. Did you have a competent force under you?

A. Yes, sir, I had a competent force, men accustomed to that class of work.

Q. And you gave that work your careful, personal supervision?

A. Yes, sir.

Q. You are thoroughly satisfied it is correct?

A. I am satisfied it is correct.

Q. In every particular.

A. Yes, sir.

955 C. J. McPHERSON, a witness of lawful age, being duly produced, sworn and examined on the part of the complainants, testified as follows:

Direct examination.

By Mr. MOORE:

Q. Please state your name in full and your residence and occupation.

A. Chester J. McPherson; St. Louis, Mo., Assistant to the General Manager of the Missouri Pacific and Iron Mountain Railway System.

Q. How long have you occupied that position?

A. Five years.

Q. What experience did you have in railroad operation prior to the time you took that position?

A. I have had a little more than 32 years' continuous experience in railroad service, ranging from telegraph operator, station agent, general yard master, master of transportation, chief clerk to the General Manager, and my present position.

Q. How long have you been connected with the operation of the St. Louis, Iron Mountain & Southern Railway Company?

A. Five years.

Q. During that time have you been in active control and management as assistant to the General Manager, and supervision of the general operation of the road?

A. I have.

956 Q. The statements filed in this case include the earnings and expenses of the line into the City of Memphis, and a part of this expense has been charged to intrastate traffic; I wish you would state if in your opinion that is correct, and if any of the terminal expenses of the Arkansas lines entering the city of Memphis, should be charged with intrastate traffic?

A. For the purpose of ascertaining the true expenses of Arkansas, in my opinion it should.

Q. Give your reasons, please, for that view, Mr. McPherson.

A. There must of necessity be a terminal on the Memphis Division; and it is immaterial whether it is on the east or on the west side of the Mississippi River. The fact that it is on the east side of the river is an accident of convenience.

If there were no terminal on the east side of the river there would of necessity have to be a terminal on the west side.

The expense of the bridge transportation and of the interchange of cars, with other railroads at Memphis, is not an operating expense; it is an expense that traffic bears directly.

It costs no more to operate the terminal on the east side of the river than it does on the west side. And if no part of the expense of the Memphis terminal were charged to state traffic—or intrastate traffic—then, the expense of caring for locomotives and

957 cars, supplies, fuel, would not follow the local work that was done by the trains on the Memphis Division.

The trains between Bald Knob and Memphis handle a great deal

of local freight, and unless a part of the expenses were chargeable to intrastate traffic no expense for handling that freight would appear in the operating accounts, as a charge against them.

The expense of handling the intrastate freight should be a charge to that freight, regardless of where the terminal may be.

Q. In the exhibits filed by the St. Louis, Iron Mountain & Southern Railway Company the extra cost of intrastate freight and passengers is ascertained by increasing the revenue percentage on intrastate traffic and reducing the percentage on both interstate and miscellaneous traffic.

I understand this method was adopted by the accountants on the theory that the miscellaneous traffic, which includes such items as mail, express, rent on buildings, and other miscellaneous items, should bear relatively the same proportion of cost as interstate traffic.

Do you regard this method as a sound one, or do you think the revenue percentage fairly represents the cost of handling the miscellaneous traffic, and the difference caused by the added cost of the intrastate traffic accrues to the benefit of the interstate traffic only?

A. In my opinion, based on the character and effort
958 necessary to acquire miscellaneous earnings, that is a proper method.

The major part of this revenue is derived from the transportation of the United States mails, and those mails are both interstate, intrastate and trans-state. The trans-state mail is made up of mail passing to and from St. Louis, Texas, Louisiana and the republic of Mexico. The entire European mail for Mexico is handled on our No. 7 fast mail train, and this is a very important part of the entire mail that we handle.

This trans-state mail that passes through Arkansas, the railway company is at no expense for the labor necessary to handle it.

With the mail to and from points in Arkansas to other points in Arkansas, and in the interstate mail to and from points in Arkansas and points outside of the state, the railway company effects the interchange to and from the depot and the postoffice with its own employés; or contracts with others to perform the service. That applies where the post office is within eighty rods of the station.

At the end of the post office routes the railway company is paid by the government up to the Post Office door, and it is compensated on the mileage basis for the service.

In turn, however, we arrange either by contract, or with our own employés under such circumstances, to perform the service.
959 This mail is in the custody of the postal clerk, and it is not charged with the responsibility that we have for its care after it is unloaded by the postal clerk, or after it is loaded into the postal cars.

Mr. HILL: Is Mr. McPherson testifying as to the contents of the contract? If so, I desire to object to that unless the contracts are produced.

Mr. MOORE: I do not think there is any objection to discussing the method of handling the mail.

Mr. HILL: If you go into the revenue derived from it, I would like to have the contracts.

Mr. MOORE: That is not involved in this case.

Mr. HILL: He is testifying as to the contents of those contracts.

Mr. MOORE: No, sir, he is describing the method of handling the mail.

If they were suing on a contract it would be a different proposition.

Mr. HARROD: He is testifying they were paid for taking it up to the post office door.

Mr. HILL: I specifically object to the contents of the contracts. Let them prove themselves.

Mr. MOORE: If you insist, we could produce the contracts. But Mr. McPherson is not endeavoring to state the contents of the contracts, but is merely describing the method of handling the
960 mail by the railway company.

Mr. HILL: I do not so understand his testimony.

Mr. MOORE: I do not see how it could be otherwise. At the same time, if you call for it, I presume the contracts can be produced. But please do not consider that I am attempting to prove the contents of the contracts.

Mr. HILL: We want them, because I think he is trying to prove the contents. I did not care about them before, but if he is going into it I would prefer to have them.

THE MASTER: Do not try to state anything that is in the contracts, except as Col. Moore may wish you to do that.

A. I am making an effort to show the actual physical work we did in connection with handling business.

Mr. MOORE: Proceed, Mr. McPherson.

A. Express matter also consists of packages handled to and from points in Arkansas and packages handled from points outside to Arkansas and from Arkansas points to other states. And also trans-state packages; that is, packages that pass through the states without any handling in the state.

The trans-state express imposes no cost on the railway company beyond maintaining, cleaning, heating and the lighting of the cars.

This express is also in the custody of the employés of the express company. And such of the state express, strictly intrastate or interstate express matter, as is handled at the stations, is done so
961 by the agents of the railway company. But they are agents of the express company while they are doing that work, and we pay them nothing for that part of the service.

There is an expense, however, attached to express matter put on and off trains in Arkansas, which is covered by the general arrangement with the express company and that is the use of the stationary facilities.

Mr. HILL: He seems to be going into the express contract there. If it is covered by the general arrangement with the company, I want to know what that is.

Mr. MOORE: He is simply describing how it is handled. I take the same view about that that I did about the mail matter.

THE MASTER: He is stating that as an expert?

Mr. MOORE: He is stating that as a matter of fact, how it is handled.

Mr. HILL: I understand him to say "pursuant to arrangement with the express company? You have a written arrangement with them. Let it speak and not the witness.

THE MASTER: Go on, Mr. McPherson. We will have the contracts produced if the witness refers to anything important in the contract.

Mr. MOORE: Confine yourself, Mr. McPherson, to the description of how it is handled.

A. The station facilities, such as platforms, trucks, drive-ways, and all the other fixed facilities which the express company
962 would necessarily have to use around the station in order that the business might be received and delivered to the trains which would also include any office room or station room.

Again, the loading and unloading of express matter is one of the prolific sources of delay to passenger trains and it must be made up by higher speed between stations, and the result is to often delay freight trains and cause overtime.

This would apply alike to the intrastate and interstate express traffic; but would not apply to the trans-state.

For that reason I believe the method followed by the accountants with respect to the express earnings is correct.

Miscellaneous earnings are credited also with the rents of buildings which the company own, and the work is attended with but little cost.

These miscellaneous earnings are to my mind analogous to interstate earnings and comparatively should follow that basis.

Q. Exhibit 3 shows that $294,000 was charged to Arkansas, for cross ties during the six months ending Dec. 31, 1907, and that this amount was 53% of the total expenses on the St. Louis, Iron Mountain & Southern Railway for cross ties during that period.

Taking into consideration the fact that 53% of the St. Louis, Iron Mountain & Southern track mileage is located in Arkansas
963 and that 54% of the total train mileage was made in that state, do you think that charge is reasonable?

A. Yes, sir, I think the charge is reasonable and to represent no more than the standard maintenance for that period of time.

It should be borne in mind that the life of a cross tie in the state of Arkansas is somewhat less than it is in other states. Our experience is, that the life of a crosstie in Arkansas is but five years while in the neighboring state of Missouri it is seven years.

The main track of the St. Louis, Iron Mountain & Southern in Arkansas, including the second track is 1331.5 miles, substantially (there is a small fraction) and the side track mileage is 509.41 miles. Of this side track mileage 114 miles consists of passing tracks, which are maintained on the same basis or standard as the main track mileage. And this would aggregate fourteen hundred

and forty-five miles the standard of which requires two thousand, eight hundred and eighty ties to the mile.

The other part of the side tracks, representing 395.41 miles requires 2,560 ties to the mile.

A renewal is necessary of all these ties represented by this mileage, every five years. This makes 576 ties to each mile of main and passing tracks every year; and 512 ties to each mile of side track each year.

The requirement is in gross 1,035,000 in a year, or one-half of that, 567,500 ties for each six months.

964 This is what we regard as standard maintenance in the state of Arkansas.

The charge for the six months of 1907, July to December inclusive, also includes crossing timbers, for which we paid at that time 12¢ per lineal foot; and those are used at all highway crossings, all crossings in the state over tracks. Not only on the main track but every side track. In fact, all of the company's railroad tracks in the state.

This charge would also include cost of switch ties.

The switch ties are sawed ties and they are on the timber basis of cost.

A main set switch ties—that is, a set for the turn out from the main track, consists of 57 pieces of sawed timber. And at that time and now the cost for those ties is $59.97 per set, excluding the cost of loading and inspection. Adding this cost the expense for each set of main line switch ties would be $63.61.

The set for a turn-out from the side tracks as contrasted with a turnout from the main track, consists of 44 sawed pieces or 496 lineal feet.

The delivering cost of these ties is $45.39 a set, the cost of inspection, loading, etc., raises this cost to $49.03 per set.

The life of these switch ties is substantially the same as the life of the cross ties, five years.

And taking into consideration the miles of side track that we have in the state of Arkansas, 509.41 miles, and the com-

965 parative length of those tracks, which are short, it is not difficult to see what an important figure in expense would be caused in renewing these switch ties every five years.

The cost at which these ties are taken into account is the invoice price plus the cost of inspection, loading and supervision.

The ties are not all bought at the same price, or were not at that time.

They are consigned to the engineer in charge of the particular work, who made an average of the price per tie adding the cost of this inspection, loading and supervision for the months concerned, and charged to his expenses the number of ties replaced during that period.

Q. Statement No. 4, which is attached to Ex. No. 3, shows the percentage of total expenses under each account, chargeable to the state of Arkansas; and it shows that 54% of the total St. Louis Iron Mountain & Southern expense is assigned to the state of Arkansas:

I wish you would state from your judgment whether that is a normal charge, taking into consideration the proportion of the business handled in the state of Arkansas; and would you consider the fact that the charge to some of these accounts was in excess of 54% was a matter of any consequence.

A. In my opinion the charge for expenses, as shown in that Exhibit, is fair and normal, considering the business done
966 between that state, Missouri, Oklahoma, Louisiana and Illinois; and is as nearly correct as can be ascertained.

Naturally, the expense should follow the volume of business done, and this statement shows how closely this relation is maintained.

The expense of operation varies from month to month as to certain items or in various accounts, from various causes; and it would not be possible to find any particular month's business, or the business of any particular period, where the relation of one account to another would be exactly the same. Some of them would fluctuate more than others.

The period mentioned, however, may be fairly considered normal, and as maintaining a fair average, in my opinion.

Q. Would it be possible to select any period of operation in which all of the operating expense accounts—that is, the operating accounts referring to located expenses shown in the statement attached to Exhibit No. 3, would be absolutely uniform, or in which the proportion of expense chargeable to the state of Arkansas would run uniformly with any corresponding period of time in the same year or another?

A. No, sir, there would be different forces at work, different conditions, all of which would make a variation in some of the accounts.

Q. All rentals for the use of foreign lines tracks have been divided between freight and passenger traffic on the basis of the actual freight and passenger revenue, and then a portion of each
967 class assigned to intrastate traffic on the revenue basis:

Those rentals include, the Little Rock Junction Railway (used only for freight traffic); the Van Buren Bridge (used only for passenger traffic) and the St. Louis Southwestern Railway track from the Missouri and Arkansas state line to Paragould (a freight line): Do you consider this to be a fair basis for division?

A. I cannot conceive of any other way that a division of expense could be fairly made. That is to say, how the expense could be otherwise apportioned.

Taking the most important one of those items you mention, the road from the Missouri state line to Paragould, the railway company found from the enormous volume of traffic between Bald Knob and the state line, that it must make further provision to handle it expeditiously. There were two things that might be done: one was to build a double track and the other to ascertain if the track already existing could not be secured at a reasonable cost, to relieve the situation. And such an arrangement was made.

No local business is done on that line between Paragould and the state line. It is merely a through line.

After this arrangement had been completed, it was found as a practical business proposition that it would be better to use it for interstate traffic, and that is the present practice.

968 It results in expediting the traffic from Bald Knob and the state line over the main line of the St. Louis, Iron Mountain & Southern, and is to all intents and purposes the same as a double track.

Q. In view of the fact that it is used exclusively for interstate business, do you regard it as proper that any part of expenses should be charged into the intrastate traffic of Arkansas?

A. Yes, sir, because it is the same as a second track, or double track, located on our own right-of-way. And the purpose of that double track would be to expedite the business of that division.

An enormous amount of local business is handled between Bald Knob and Knobel, and the relief that it gives to the main line makes it one of the instruments of aiding transportation, making it possible in effect to conduct the transportation of the intrastate and interstate business, both freight and passenger.

Q. Have you given any attention——

A. Pardon me, Col. Moore, but I would like to speak of the Van Buren Bridge. I have not yet fully answered your question.

Q. Proceed with your answer.

A. Whatever aids in the facilities of the railway is a charge to the entire traffic that it handles. It may be that that added

969 facility would handle only freight business; or that would handle only passenger business. But a necessity existed for relieving the entire operation. Otherwise, the facility would not have been added to the railway company's development.

Now, the Van Buren Bridge adds to the general facilities of the company in that way. It expedites the movement of all traffic.

Likewise, the Little Rock Junction Railway. It may be used only for freight purposes but it is necessary in order to facilitate the handling of all trains.

Freight trains can go in there and get out of the way of passenger trains, thereby aiding the passenger trains.

They are the material aids to all of the traffic that the company would handle.

Q. Have you given any attention to the expense of railway operation, generally, say during the last ten years or say during the period since the year 1897: if so, I wish you would state if the cost of operation has increased any during that period and state fully the character and cause of such increase.

A. Yes, sir, I have given it a great deal of attention. In fact, I have given the major part of my attention to questions of economies, what can be done to keep the cost of operation down, and what could be done to neutralize the forces that were working toward an increase of operating cost.

To answer that, however, would involve considerable reference to figures.

Q. State all the figures and facts necessary to

970 elucidate and show what the increases if any had been and how they have been brought about.

A. The cost of operation has increased enormously since 1897 and that has been caused by various forces. The principal of which is the increase in wages paid to all classes of railway employés.

Second, the increased cost of material.

Third, the increase due to compliance with various laws.

Fourth, by the increase in taxation.

There has been an upward tendency in wages of all railway employés since 1897 and sharply so, since 1900.

The increase in wages paid to yard men and to train men and to engine men and to the various crafts can be segregated exactly, as these wages are of uniform establishment all over the system and apply everywhere alike, and are matters of understanding without employés in those classified services. With a large number of other employés it is impossible to ascertain exactly, prior to the increases made in the year 1907, just what they amount to, without a prohibitive amount of labor.

The increase, however, has been general along the entire period that I have mentioned.

Since 1897 the increase in wages that have been made to the train service employés is as folows:

971 Locomotive engineers, 32.6%.

Firemen, 31.5%.

Conductors, 31.8%

Brakemen, 27.5%.

Switchmen, 61.9%.

Since 1900 the various crafts have had a large increase in wages:

Blacksmiths, 23.9%.

Boilermakers, 26.3%.

Machinists, 26.3%.

Tinners and pipe fitters, 23.2%.

Carmen, 13.2%.

Since 1906:

Telegraphers, 13%.

Train porters, 12.5%.

Chair car porters, 14%.

Q. Have you those figures in the form of a statement you can file as an exhibit?

A. Yes, sir.

Q. File that as a part of your testimony, and we will ask that it be marked Exhibit 27.

The statement referred to is marked, "C. J. McPherson Exhibit 27."

Said exhibit is in the words and figures following to-wit:

For Exhibit 27, see Volume 8, page 5352.

972 A. (Continued.) The magnitude of this increase can be better shown by a comparison of the dollars it represents.

The amount paid to the ten classes of employés mentioned and which are covered by the first five in the exhibit and the second five in the exhibit; that is, excluding telegraphers, train porters and chair car porters on the entire system of the Missouri Pacific and St. Louis, Iron Mountain & Southern Railway Companies combined,

for their services in the fiscal year ending June 30, 1908, was $11,196,767.

Had the schedules prevailing prior to 1902 prevailed in the fiscal year ending June 30, 1908, this payment would have been only $7,803,951, a difference of $3,392,815 which represents the increase in that one year in wages of these ten classes of employés.

The scale of wages is uniform, as I said before, all over the system, and of this increase Arkansas would bear something more than her relative proportion, because of the third brakemen law.

The increase in wages has extended to all classes of employés, particularly since 1902.

But, as I said before, the amount in the unclassified service cannot be exactly stated, prior to 1907.

In that year, because of the increased cost of living, an advance of wages was made to many persons in the unclassified
973 service, which including the classified service I have referred to, averaged 6.7% of the entire labor roll for the fiscal year ending June 30, 1908.

This ratio of increase in wages does not show the increased cost to the railroad company of the services of all of those classes of employés.

Firemen formerly wiped their engines above the running board but since April 1, 1907 they have been relieved of that duty, making it necessary for the railroad company to employ others to perform the service. And this at, as near as we are able to approximate it, a cost of $60,000 per annum.

Switchmen formerly worked 12 hours a day as a unit of a day's work. They now receive 61.9% increase in wages and their hours of service has been reduced to ten hours as a unit of day's work.

Since 1900 the classification of railway employés has been sharply defined, and has resulted in a gradual increase in force.

Telegraph operators and station agents formerly delivered the mail to and from the post office, without extra compensation. Now the railway Company must hire others to *to* do this work or else pay the telegraphers or agents extra under their schedule for its performance.

The same is true of caring for switch lamps. Agents and operators who assist them formerly did that without extra compensation.
Now that work is either done by others or the railroad com-
974 pany adds a certain amount to the schedule of pay of the agent or operator who performs the work.

Great as has been the increased cost to the railway company by reason of labor advances, it is proportionately smaller than the increased cost brought about by the advance in price of materials entering into railway construction and operation and maintenance. This feature of the increased cost combined with that of wages, has augmented the cost of operation to almost an incredible extent.

One of the largest items in maintenance of way and structures is cross ties, the cost of which for those produced in Arkansas has increased 108 to 129% over the cost of 1897.

Up to 1900 this company paid 24 cents per tie for first class

cross ties in that state. This price increased to 26 cents per tie in 1900 or 8.3% and to 31½¢ per tie in 1904 or 31.5%. And to 55¢ per tie in 1908, or 129% for those ties delivered north of the Arkansas River; and to 50 cents per tie or 108% for ties delivered on the railway company's right-of-way south of the Arkansas River.

These are the prices that the company is paying today for first class cross ties, delivered on its right-of-way in Arkansas.

Now, applying those increases to a million or more ties per annum shows that this single element of expense has increased relatively $250,000 a year, due entirely to the advance in the cost of cross ties.

Other material entering into railroad operation and main-
975 tenance has likewise largely increased.

I give a comparison of prices paid in 1898 with prices paid during the current months of this year on some of the principal materials that the railway company uses.

Items of angle bars cost in 1898 $1.02½ per cwt.; in 1909, they cost $1.75 per cwt. or an increase of 71.5%.

Angle bars connect the joints of the rails.

Track bolts increased from $1.60 per cwt. in 1898 to $2.50 in 1909, or 56.2%.

These are the bolts that hold the angle bars in their place.

Tracks spikes increased from $1.60 in 1898 to $2.05 in 1909, or an increase of 28.1%.

Lime increased from 40¢ a barrel in 1898 to 75¢ a barrel in 1909, or 87.5%.

For the purpose of shortening this perhaps I can read the two items, one in 1898 and the other in 1909?

Mr. MOORE: Yes, do that, Mr. McPherson.

A. (continued). Cast pipe $14.60 to $28.50 or 95.2%.

Nails $1.33 per cwt. to $2.20 per cwt. or 65.4%.

Barbed wire $1.80 per cwt. to $2.05 per hundred or 13.9%.

Bridge stringers $20 a thousand to $28 a thousand or 40%.

Piling from 10 cents per lineal foot to 15½¢ per lineal foot or 55%.

976 Miscellaneous bridge timbers from $16 per thousand to $19.50 per thousand or 22%.

Dimension lumber from $12.50 per thousand to $17 per thousand or 36%.

Bar iron (the foundation of all our iron work) from $1.10 per cwt. to $2. per cwt., an increase of 81.8%.

Malleable journal boxes for cars and tanks from $1.60 each to $2.86 each or 78.7% increase.

White lead from $5.14 per cwt. to $7.00 per cwt. or 36.1%.

Freight car decking $13 per thousand to $14 per thousand or 7.7%.

Tank steel from $1.00 per hundred to $1.96 per hundred or 96% increase.

Car axles from $1.65 per hundred to $2.05 per hundred or 24%.

Malleable iron from $2.40 per hundred to $3.50 per hundred or 45.8%.

Waste 3.50 per cwt. to $5.50 per cwt. or 57%.

Chains from $1.90 per cwt. to $4.50 per cwt. or 136.8%.

Forgings from $1.95 per hundred to $3.25 per hundred or 66.6%.

Gray iron castings from $1.37½ per cwt. to $1.80 or 30.9%.

Brass tubing from 16 cents per foot to 21¾¢ per foot or 35.9%.

977 Brass shoes from 13½¢ per pound to 26½¢ per lb. or 96.3%.

Journal bearings from 11¢ per lb. to 16¢ per lb. or 45%.

Brass castings from 12½¢ per lb. to 18¢ or 44.4%.

Track switches from $29.40 each to $39.50 each or an increase of 34.3%.

Track frogs $30.25 each to $37.73 each or 24.8%.

Boiler tubes or flues from 6½¢ per foot to 16¢ per foot or 147.7%.

Boiler tubes or flues are an important item of expense.

Every locomotive has about a mile of flues. Take a standard locomotive with three hundred and fifty flues, 15 feet long, makes substantially a mile of flues in that locomotive. And the increase in the cost of renewing the flues in the locomotive is over $400 each over 1898.

I have used the figures of 1909 here as there was some recession in the prices in some of these articles in 1908 from the level of 1907. Particularly was that the case with lumber.

General- speaking, however, the prices of materials are regaining the level of 1907.

Here (indicating) is an exhibit of the prices to which I have just testified.

Q. Will you attach that as an exhibit to your testimony?

978 A. Yes, sir.

The paper referred to is marked "C. J. McPherson Exhibit 28." Said exhibit is in the words and figures following to-wit:

For Exhibit 28, see Volume 8, page 5354.

979 Bulletin No. 75 issued by the Department of Commerce and Labor in March 1908 exhibits the range in prices of some materials entering into railway maintenance and operation from 1897 to 1907.

Q. Will you attach that to your testimony?

A Yes, sir.

The paper referred to is marked "C. J. McPherson Exhibit 29." Said exhibit is in the words and figures following to-wit:

For Exhibit 29, see Volume 8, page 5356.

980 Mr. MOORE: These are different articles from — contained in your exhibit 28, are they?

A. Yes sir.

A. And, are these articles that enter largely into operation and maintenance of railways.

A. Very largely .

Q. Proceed, Mr. McPherson.

A. Particularly is that the case with hand tools. There are a few of those items that appear in both exhibits, but bar iron and lime are two of the articles. Also nails.

These figures are expressed decimally, and possibly it would add nothing to their force to read them.

The operating cost has been largely augmented in Arkansas by the enactment of laws imposing special duties and obligations upon the railway. Some of these laws became effective in 1907 and prior to that date, and others have become effective since that time.

These laws, in my opinion, impose unnecessary burdens and expense upon the Railway operation. In any event they largely increase the cost of operation? That is their effect.

The experience of many years in practical railway operation has not shown to me, nor has it shown to other railroad men, that the requirements of these laws would in any respect improve or increase the efficiency of the railway service.

981 The increase in the operating expenses in the State of Arkansas, which may be readily ascertained, which results from compliance with those laws, are, first the application of electric headlights to locomotives.

The original cost for the installation of these headlights on locomotives in Arkansas was $68,142.00.

The net annual cost of operation is $91,941.00.

The third brakeman on freight trains: The annual cost is $167,101.00.

The full crew law, affecting passenger trains, adds $11,326.00 to the annual — of operation in the State.

The semi-monthly pay-day law entails an added cost of $34,700.00 per annum.

Mr. HILL: He is going into some laws that were passed since our period of inquiry. This semi-monthly pay-day law was passed by the last legislature. I do not think we ought to encumber the record with matters subsequent to the issues of this case.

Mr. MOORE: I think it is material in this way: the effect of the rate is a matter for the future and it goes to determine whether the rates we are complaining of are confiscatory or non-confiscatory. We look to the future as well as to the period involved in our debits and in doing that the Court cannot determine its effect without having knowledge of the matters, which are fixed and established and beyond any doubt or question.

Now if it were a matter that might be changed, some extraneous matter that might be changed, might be operative one season

982 and not the next, that would be a different thing. But these laws are in force and presumably will be in force. I think the Court would be absolutely without the facts, which it should have before it, if we do not have this evidence.

Mr. HILL: I do not understand this is to determine rates, in the future, but whether the rates already fixed are compensatory.

Mr. MOORE: That is true. Those rates will be in effect in the future as well as in the past.

The MASTER: It may have some bearing on the case so I think the evidence may be admitted.

Mr. HILL: We suggest this, so as to clear the record: that Mr. McPherson indicate which laws were passed afterward and which before the period we are inquiring about, so as to save a lot of cross examination.

Mr. MOORE:

Q. Have you those dates Mr. McPherson?

A. I do not know that I have.

A. If you have the date, give it.

A. I can say that the semi-monthly pay day law was enacted I believe at the last term of the legislature; and the monthly claim agents' station visitation law also.

Q. I suggest in passing, that if you refer to any statute passed at the last session of the legislature call attention to it as you go along.

A. The last legislature passed what we have termed a monthly claim agents' station visitation law, which adds to the cost of
983 operation $12,000.00 per annum.

Sheds over freight repair tracks (which I believe was passed several years ago, if I mistake not it was in 1905) the cost for installation was $13,190.00; and the annual maintenance cost is $1,319.00.

The total of the expenses incident to complying with those laws, on the current volume of business and under current conditions, was $217,987.00 per annum.

The electric headlight bill was passed—I do not think I can give the dates when the statutes were passed but I think the law requiring the railway company to equip its locomotives with electric headlights was passed either at the session of 1907 or the preceding session.

The cost of oil headlights, which the railway company used for original installation was $25.00; while the electric headlight costs $242.50 each.

The oil headlight was maintained and operated at a cost of $198.72 per locomotive per annum.

The cost of maintaining and operating a 1500 candle power headlight, the degree of brilliancy required by the statute is $524.52 per locomotive per annum.

The increased headlight cost of maintenance and operation per locomotive per annum, therefore, is $325.80.

The figures used and referred to represent the net annual cost of operation and is derived by subtracting the cost of operating the oil headlight from the cost of maintaining and operating the electric headlight.

The cost of operating the electric headlight was determined by actual test that we had made to ascertain what the increased
984 cost would be, imposed upon the railway company, to comply with this act.

The electric headlight, in my judgment, adds nothing to the efficiency of the railway company's operation.

Q. You say the electric headlight, in your judgment, adds nothing to the efficiency of operation: have you ever given that matter any personal examination or test for the purpose of forming a judgment as to its efficiency?

A. Yes sir.

Q. State the facts, upon which you base your judgment in that respect.

A. A similar act passed the legislature of Missouri at its last session, and some officials of the railway companies and a number of engineers and firemen visited Jefferson City and interviewed Gov. Hadley.

These locomotive engineers represented to the Governor that the electric headlights——

Mr. HILL: That is objected to as hearsay.

A. I was present at that hearing.

They represented to Governor Hadley that the electric headlight was a detriment, in their opinion, to railway operation, because where an engine approached a station where a locomotice equipped with an electric headlight was standing, the approaching train could not see the different signals, that is, the fixed signals of the station and the switches. They could not tell whether the lights
985 on the switches were red, or danger, or yellow. The radiance of the headlight of the engine standing at the station was so much stronger than the other lights that their entire coloring and usefulness was lost.

Also that in running facing an electric headlight the injury to the eye, if one attempted to keep his eye on the track was great; and that they believed that it could be stated without contradiction that locomotive engineers would suffer in their visual power if electric headlights were continued to be used; that it was impossible to look into the headlight itself, without injury to the eyes; and that a man approaching the station must take his eyes off the track over which he was running, or drop his eyes below the radiance of the electric headlight.

Some illustrations were given of accidents that have occurred.

That evening we made a test of those particular points in our yard at Jefferson City. I cannot say what Gov. Hadley's views were, but we prepared the engines, standing them with fixed switch signals between, and the result was on the Railway Company's agreement to provide a satisfactory headlight the Bill would be vetoed, and it was.

There is very much that can be said about the electric headlight that will ultimately apply to Arkansas which does not perhaps apply now, because of the fact that there is so little double
986 track in the State. With the building of double tracks, however, the facing of an electric headlight will blind both engineers and they cannot tell what is between them.

It is a fact that the Pennsylvania Railway applied electric headlights, to many of their locomotives some years ago and because of that feature and the fact that they are so largely dependent upon

fixed signals in their operation they discontinued them, took them off.

Q. Are your impressions as to the inefficiency of the electric headlight derived from or confirmed by the investigation you made at Jefferson City on the occasion you speak of?

A. They were confirmed by that. We tried to reproduce as near as we could the exact conditions that the engineers complained of.

Q. Proceed Mr. McPherson.

A. The third brakeman law adds very heavily to the expense of operation in Arkansas. It increases the cost for labor on every through freight train fifteen per cent.

Q. Do you know when that law was passed?

A. I think it was passed at the same time as the electric headlight law. That was approved March 28th 1907 and the electric headlight laws approved May 28th, 1907.

987 Mr. HILL: Neither of them became effective at once, did they?

Mr. MOORE: I do not know about that.

A. (Continued.) The third brakeman law makes it unlawful, under heavy penalties, for the railway company to operate freight trains of more than twenty-four cars with less than three brakemen, regardless of any modern equipment and automatic couplers or air brakes.

The Railway Company has always provided three brakemen on their local freight trains. Those trains that do the switching at local stations, and which load and unload package freight.

The Railway Company, however, expended $4,748,231.00 to equip its locomotive- with air pumps, and driver brakes and its freight cars with automatic couplers and air brakes. And all its equipment today that is in active service is equipped with these safety appliances.

The cost of their maintenance on the system (I cannot segregate it to Arkansas) is approximately $50,000.00 per annum.

The trains are now controlled by the engineer on the locomotive. Prior to the introduction of these appliances trains having in excess of twenty-four cars employed but two brakemen to render all the service that is rendered today, and in addition those brakemen coupled and uncoupled the cars with links and pins, and controlled the train with hand brakes.

988 The duties of freight brakemen today are practically to protect the train. Under certain circumstances it becomes necessary to chain up a car, where the draw bar has pulled out, or pack a hot box. But these are emergencies and in such case it is the duty of the rear brakeman to go back and protect the rear of the train.

Q. You mean against approaching trains?

A. Yes sir, against approaching trains.

Under the rules it is the duty of the fireman (if it is necessary to protect in both directions), to go forward and protect the train from approaching trains.

That left the head brakeman to assist the conductor in whatever way this emergency work made necessary.

One of the reasons for the efficiency in railway operation in the train service is that every man has a fixed duty to perform, and it is necessary for him to discharge that duty; and his associates know whether he is discharging it or not. That is, the safety is in that there is no divided responsibility. The responsibility is exactly fixed, and the employé knows exactly what he has got to do. He knows that his position depends upon it, and oft-times his life depends upon the fidelity with which he does that work.

In the assignment of the through freight trains, it is the duty of one man to protect the rear of the train. It is the duty, in case of emergency, of the fireman to protect the head of the train. He has nothing else to do if the locomotive is standing. The con-
989 ductor has his added assigned duties.

With the assignment of three brakeman to a through freight train, one would ride on the locomotive and two would ride in the caboose with the conductor.

Such a condition as that is likely to bring about a divided responsibility. There is an unnecessary man on that train. There are more employees on that train than there are duties and for that reason the efficiency of the service is not increased. On the contrary, circumstances might make it such that the efficiency of the train service would positively decrease.

From any point of a view a divided responsibility, brought about by an unnecessary man in a service, so exacting as the train service of a railway, is a danger in railway operation.

Under the full crew law, as applied to passenger trains, and that act was passed at the last session of the Arkansas legislature, all trains operating three cars, or more, must have a porter and flagman or brakeman.

Generally speaking the main line trains are thus provided, but this law extends to branch lines, where the trains are few and it prevents the railway from utilizing the baggageman on the train for flagging purposes and that as all that would be required to give safety to the train operation.

The expenses incident to compliance with this law is
990 $11,326.00 per annum. And in my opinion this adds nothing whatever to the efficiency of railway operation.

The semi-monthly pay day law, which requires all railways in Arkansas, under a heavy penalty, to pay its employees twice each month, instead of once each month, certainly adds no efficiency to the service, but, to the contrary, for perhaps obvious reasons particularly is that true of the track labor.

And, furthermore, it is calculated to lead men to lay off more frequently than where they have but one monthly pay day. And that is in actual operation the result of that law.

The monthly claim agents' visitation law requires the claim agent to visit each station on the line, where notice has been given by the station agent of the killing or injuring of live stock, once every thirty

days, under severe penalty running not only against the railway company but against the claim agent himself.

To comply with this law the railway company has been obliged to divide the line into shorter districts and employ more men, at greater expense, to cover the service.

Many special laws have been passed requiring the railway company to erect stations and maintain agencies and operators at points where in the opinion of the company no necessity existed and where the revenue was very small.

Increase in taxes paid to the State of Arkansas by the St. Louis, Iron Mountain and Southern Railway Co. is shown in the in-
991 crease of one hundred per cent of the assessed valuation of the property between the years 1900 and 1908 inclusive.

While the increase in the mileage during that period was but twenty-five per cent.

In 1900 the St. Louis, Iron Mountain & Southern Railway Co. had 1033.77 miles of main track in Arkansas. The assessed valuation was $10,283,305.00.

In 1907 the mileage was 1299.9 miles the assessed valuation $20,158,032.00 or $15,517.00 per mile.

The taxes paid in 1900 amounted to $182,388.11 or $176.00 per mile. While the taxes in 1907 were $432,637.42 or $333.00 per mile; an increase per mile of $157.00.

In 1908 the mileage was 1297.21 miles and the assessment was $20,626,170.00.

The amount of taxes paid was $448,527.49 or $346.00 per mile. An increase per mile for taxes of 96.6% in 9 years.

Q. Have you a diagram or representation showing the comparative prices of material during the period covered by your statement?

A. Yes sir, I have an illustration made in graphic form to cover the points to which I have testified.

992 Q. Will you attach that diagram to your testimony as an Exhibit?

A. I will.

The paper referred to is marked "C. J. McPherson, Exhibit 30." Said Exhibit is in the words and figures following, to-wit:

For Exhibit 30, see Volume 8, page 5358.

993 Q. Will you please explain your Exhibit 30?

A. The base line, which is an imaginary line in this case, is established at 100%. That is the unit in each case, the point at which the rise or fall shown in the statement begins.

For example, train labor (the mauve colored line) begins in 1897 at 100% and at the year 1909 reaches a little more than 37% elevation. Each of the small blicks is 1%.

Train labor, therefore, on the average, has increased in the period from 1897 to 1909 a little more than 37%.

Shop labor is the yellow line, starting at the year 1900 and shows an increase to 123, or 23% above the base line in 1909.

Cross ties begin with 1898, showing no change in the price until 1899, when the advance begins and continues up to 229, which is

129% above the base line, for cross ties north of the Arkansas River; and to 208 or 108% above the base line for cross ties south of the Arkansas River.

Q. What was the increase in 1908?

A. From 1908 to 1909 is substantially 3%.

Q. What is the increase in the year 1908 above the year 1898?

A. The increase is 129% for cross ties north of the Arkansas River and 108% for cross ties delivered south of the Arkansas River.

Q. And what is the per cent of increase in the year 1907 as shown on that graphic exhibit?

A. About 117%.

994 Taxes, represented by the red line, starting at 1900 and advancing to 197 in the year 1908.

Materials, represented by the green line, do not show any fluctuation in the twenty-nine other materials represented by Exhibit 28. That is because we have not the intermediate prices. We have the two extremes. We know the prices that were paid in 1898 for those articles, and the prices that are paid in 1909. There undoubtedly have been recessions and increases, that have occurred in some of them in the meantime. But that is a matter to develop which would take a great deal of labor,—too much to be profitable.

The lower red line, going below the base line, represents the ton mile return to the Company for the service it does; in other words, the revenue per ton per mile received by the St. Louis, Iron Mountain & Southern Railway Company.

Q. You mean throughout that period?

A. Yes, sir; during the period from 1897 to 1909. This shows a general downward tendency, equivalent to 12% reduction in that period.

Q. Do the conditions described in your statement concerning the increase in the cost of operation apply generally to railroads operated in the State of Arkansas?

A. Yes, sir, generally speaking they do. They could buy materials probably at no less cost than we; and labor conditions are generally the same.

At this point recess was taken until two o'clock.

995 C. J. McPherson.

Direct examination resumed by Mr. Moore:

Q. I understand that the reduction in receipts, per ton mile, shown in the diagram filed by you as Exhibit 30, applies to all traffic. Is that correct?

A. All freight traffic.

Q. All the freight traffic?

A. Yes, freight traffic.

Q. Does it apply to the traffic in the State of Arkansas, or the entire St. Louis Iron Mountain Road?

A. On the St. Louis Iron Mountain Southern Railway, which includes, of course, Arkansas.

Q. What effect do the facts that are illustrated on that Exhibit, show as to the revenue producing capacity of the Railroad, during the period covered by it?

A. This diagram shows that the producing power of the Railway has decreased, relatively, for the volume of business done. That is to say: Its transportation, which is its only purchasing power; while everything that the Railway purchases, has increased.

The decrease in its purchasing power, for the same volume of business, is approximately twelve per cent, while the increase in all of the things that the Railway Company has to buy; its
996 labor and material, and what it has to pay as its taxes, has increased.

Q. Exhibit number 6, filed in this case, shows that it costs $64.34 to earn $100.00 of revenue, in Group 8, during the fiscal year ending June 30, 1907, and that it cost $73.88 to earn the same amount of revenue in the State of Arkansas, during the six months ending December 31, 1907. How do you account for this difference in the ratio of cost?

A. That is, the ratio of expense to gross earnings?

Q. Yes sir.

A. Broadly speaking, the ratio of expense to gross earnings is not an index of very much value for comparative purposes. It is dependent on several factors.

It is dependent on the conditions, favorable or otherwise, that may permanently differ as between railroads; conditions that may come about in the same year, and different years, on the same railroads.

It depends on traffic and it depends on expenses.

It also depends on the standard of maintenance observed by the different railroads, compared; or upon the same railroad in different years.

It is entirely possible for that ratio to vary between railroads, as much as ten per cent, from the maintenance put upon the property by the different roads, or upon the same railroad in two given years.

Taken independently, without the analysis of its factors for comparison to determine the efficiency of operation, the road that expended less than a sum sufficient to preserve its standard
997 maintenance, would apparently be better operated and more favorably conducted than a road that preserved its standard of maintenance by expending a larger sum.

The comparison of Exhibit 6 is between two different periods. One is a fiscal year ending June 30, 1907, and the other for a six months' period ending December 31, 1907.

The conditions that existed during those periods were unlike. The cost of operation during the latter period were increased largely, for various reasons; increase in the cost of labor; increase in the cost of material, and for other reasons.

Late in 1906 all of the organizations connected with the train service, formulated demands on Railroad Companies—all of the Companies, in fact, west of the Mississippi River, and north and northwest from Chicago—for a very radical change in the labor status.

This demand was for a reduction in the unit time of labor to eight hours, with an effort to substitute the shifts of work from ten or twelve hour periods to eight hour periods. And also for an increase in the rate of wages.

This would have reduced—had it been granted—the potentiality of the day's work to eight hours, in the train service, instead of ten hours, which is now the established minimum.

A conference of the representatives of the labor organizations and forty-eight or forty-nine railroads, followed, and continued something like ten weeks, at which a compromise was effected.

998 The labor organizations withdrew their demand for the reduction in hours and were given an increase in wages, amounting, for engineers and firemen, to 8.2 per cent; 10.2 per cent for trainmen.

The yardmen had been increased on the first of the preceding November in their wages, 13.4 per cent.

These increases in wages took effect, for the engineers on February 1, and for the firemen and trainmen on April 1, 1907.

In the meantime, all of the crafts, the shopmen, boiler makers, machinists, blacksmiths, tinners, pipe-fitters and coppersmiths, had made demands, through their organizations, for an increase in wages, and these increases were also granted; to the machinists and boiler makers, 8.8 per cent; boiler makers' helpers, 8.3 per cent; blacksmiths and their helpers, 9.7 per cent; car department employés, 6.1 per cent; tinners, coppersmiths and pipe fitters, 4.8 per cent.

During the balance of the year 1907, it was necessary also to make increases in the wages of unskilled labor, because of the increased cost of living.

The total increases that were made, including the crafts and the train service men, affected 19,811 employés, of the approximately 37,000 employés in the service of the System. It amounted, during the six months' period, in Arkansas, to $215,204.00, or 6.7 per cent of the entire labor rolls.

Of the entire operating expenses in the state of Arkansas

999 65.9 per cent is for labor, and it was on this proportion of operating expenses, that this increase of 6.7 per cent was made.

During the same period the cost of all materials used by the railway in its operation and maintenance, made a substantial advance.

I quote from Bulletin No. 75, issued by the United States Department of Commerce and Labor, in March 1908, the articles as shown in that report, that enter into railway maintenance and operation:

Item.	Price—1906.		Price—1907.	
Coke	$2.67½	per ton	$2.82½	per ton
Crude oil	1.5975	" bbl.	1.7342	" bbl.
Refined oil	.0762	" gal.	.0824	" gal.
Augurs	.3567	per doz.	.36	" doz.
Axes	.6715	each.	.68	each.
Bar iron	1.69	per hundred	1.75	per hundred
Barb wire	2.48	" cwt.	2.63	" cwt.

Item.	Price—1906.		Price—1907.	
Chisels	.418	each.	.4438	each.
Copper	.1961	per lb.	.2125	per lb.
Sheet copper	.2375	" "	.2792	" "
Copper wire	.2108	" "	.2404	" "
Lead pipe	6.42	hundred lb.	6.70½	" hund.
Mortise locks	.18	each.	.20	each.
Eight penny nails	1.9313	per cwt.	2.1625	per cwt.
Wire nails	1.9583	" "	2.1167	" "
Pig iron, Bessemer	19.5442	" ton.	22.8417	" ton.
" " gray forge	16.5313	" "	20.9875	" "
Steel billets	27.4475	" "	29.2530	" "
" sheets, black	.237	" lb.	.250	" lb.
Tin plates	3.86	" cwt.	4.09	" cwt.
Vises, solid	4.528	each.	5.75	each.
Wood screws	.1055	per gro.	.1219	per gro.
Zinc sheet	7.1725	" cwt.	7.4815	" cwt.
Lime (U. S. it is a little different from our price of lime)	.9471	" bbl.	.9492	" bbl.
Linseed oil	.405	" gal.	.432	" gal.
Plate glass	.2267	" sq. ft.	.23	" sq. ft.
Resin	4.1461	" bbl.	4.3771	" bbl.
Tar	1.9583	" "	2.3292	" "
Manila rope	.1252	" lb.	.1290	" lb.

1000 These figures are quoted as showing the increase in cost of very many of the articles that enter into railroad consumption.

The relative increase on other articles I have not segregated as between 1906 and 1907, as these figures are accessible, and from the Government.

Again, the Interstate Commerce Commission, under the Hepburn Act, which became effective in August 1906, issued a new classification of operating expenses, and this classification introduced a new charge into railway operation, requiring the railroads to set aside each month, a charge to its operating expenses, for "depreciation of equipment."

It provided arbitrarily, for a similar charge for "renewals of equipment."

These two items alone increased the cost of operation in Arkansas, $48,053.00, during the six months in question.

During this period also, the Railway Company was required by the Legislature of Arkansas to increase the cost of operation of their through freight trains, to the extent of 15 per cent for labor, by the addition of another brakeman on all of these trains that drew in excess of twenty-four cars.

These brakemen were put on the first of May, 1907. The previous fiscal year showed but two months of that increased cost.

1001 This increased the cost of operation of the Iron Mountain, in Arkansas, $67,104.00 per annum, based on current operation.

The total of these expenses that have increased because of wages, because of these charges, and the increase in force, amounted to $296,818.00 for that six months, over the corresponding period of the previous year.

While it is not possible to ascertain accurately the contribution made to the increase in expenses, by the increased cost of material, this expense is, nevertheless, reflected in the various accounts making up the maintenance of way, maintenance of equipment, conducting transportation, and general expenses, and, with the other items that I have mentioned, make up the increase in ratio of expenses to the earnings for that period.

The ratio of expenses to earnings, on the Iron Mountain, as a System, for the fiscal year ending June 30, 1907, was 62.8 per cent.

This is the ratio of operating expenses to earnings, during the fiscal year, as shown by Exhibit 6, and the ratio for operation in the United States, was 67.53 per cent, and in Group 8, 64.34 per cent.

It was 4.73 per cent less on the Iron Mountain than the average of the railways in the United States, and 1.54 per cent less than the average in Group 8.

Comparing the operation of the Iron Mountain for relatively the same period, or a portion of it, with Group 8, shows, on the
1002 ratio of operating expenses to earnings, considerably better than that on the average of the United States, or the average of Group 8.

Bringing a comparison of those periods together, the ratio of the Iron Mountain is lower.

A comparison of the operating ratios of Railways touching Arkansas, and the Railways operated, perhaps, under similar conditions, for the fiscal years ending June 30, 1907, and June 30, 1908, as ascertained from their published annual reports, show that the increase in the ratio of operating expenses was not confined to the Iron Mountain alone.

The first figures for each Railroad will represent the fiscal year ending June 30, 1907, and the second, the fiscal year ending June 30, 1908:

St. Louis, Iron Mountain & Southern Ry. Co.....	62.8%	68.9%
St. Louis & San Francisco.....	65	70.1
St. Louis & Southwestern.....	68.2	78.10
Chicago, Rock Island & Pacific.....	67.9	72.4
Kansas City Southern.....	59.2	72.4
Missouri, Kansas City & Texas.....	63.9	70.6
Illinois Central	68.4	72.7
Alabama-Vicksburg	70.5	78.8
Vicksburg, Shreveport & Pacific	75	82.9
Atchison, Topeka & Santa Fe.....	62.2	67.1

Similar wage conditions affected all of the Railways above mentioned, as, with the exception of the Alabama & Vicksburg and the Vicksburg, Shreveport & Pacific, they were parties to what is known as the "Chicago Conference" which I mentioned a few mo-

ments ago, at which time the changes in the rate of pay of train, engine and yard men, were made.

Since Exhibit 6 was filed by our accountant, I wired the
1003 Interstate Commerce Commission, and have secured the advance bulletin of revenues and expenses of System roads in the United States, by months, for the first nine months of the fiscal year ending June 30, 1909, which gives a comparison of the same months of the previous year. This enables a comparison to be made of the six months from July to December, inclusive, 1907, as far as the United States is concerned, and with the various railroads; or, the more important ones.

It does not, however, group these railroads into the Interstate Commerce classifications, and it is not possible to make a comparison with Group 8 on that account.

From this advance bulletin I have made up a comparison, in parallel columns, showing the six months' operation, ending December 31, 1907, which I file as Exhibit 31.

(The paper was accordingly marked "C. J. McPherson Exhibit 31.")

Said exhibit is in the words and figures following, to-wit:

For Exhibit 31, see Volume 8, page 5360.

1004 In view of the fact that "hire of equipment" was not shown in these advance reports, I have omitted the "hire of equipment" from the expenses of operation, both on the Missouri Pacific System, and on the Iron Mountain in Arkansas, in order that the comparison may be made on the same basis.

It will be seen that the ratio of operating expenses to gross earnings, of all the roads in the United States, increased for that period 1.56 per cent over the fiscal year ending June 30, 1907.

The ratio, however, for roads similarly situated, in much the same territory and where similar conditions prevail, is greatly increased for that period.

The St. Louis & Southwestern,	from	68.2%	to	72.32%.
St. Louis & San Francisco,	"	65	"	71.30
Rock Island,	"	67.9	"	71.30

The Rock Island and the St. Louis & San Francisco are combined in the Government figures.

Mr. HILL:

Q. What are you making that comparison with? What can we follow it with?

A. I am making a comparison with the previous fiscal year.

Q. Have you already put that in?

A. I have just testified to it. It is a part of what I read a moment ago.

Q. All right.

WITNESS: (Continuing.)The Kansas City Southern from 69.2% to 65.13%.

1005 Comparing the ratio of expenses with the earnings for the fiscal year ending June 30, 1907 (the comparison that is made with the Iron Mountain in Exhibit 6), with that of the ratio for the six months ending December 31, 1907, the ratios are as follows:

St. Louis-Southwestern	increased	from	68.2%	to	72.32%
St. Louis & San Francisco	"	"	65	"	71.30
Kansas City Southern	"	"	59.2	"	65.13
Chicago, Rock Island & Pacific	"	"	67.9	"	71.30
Illinois Central	"	"	68.4	"	74.39
Alabama & Vicksburg	"	"	70.6	"	77.69
Atchison, Topeka & Santa Fe	"	"	62.2	"	70.22

These ratios for the fiscal year were taken from the annual reports of those Companies.

It will also be seen, by examining this Exhibit, that the gross expenses per mile of road (that is the last line of the statement), in the United States, was $4,109.00.

On the St. Louis, Iron Mountain & Southern in Arkansas it was $3,512.06.

This statement perhaps shows as well as any statement that can be made, the value of the ratio of operating expenses to gross earnings, as an index of railway operation.

The Kansas City Southern expended in operation $3,788.74 per mile of road, during the six months, with an operating ratio of 65.13%, while the Southern Railway expended $822.00 per mile; less than the Kansas City Southern, but her ratio of operation is 74.68%.

The Seaboard Air Line expended $1,557.00 per mile in its operation, (Less than the Kansas City Southern), yet its ratio of operating expenses to the gross revenue is 77.8%.

1006 The St. Louis, Iron Mountain & Southern Railway Company expended $3,512.06 per mile, during the six months' period of operation, as against $2,964.00 per mile, expended by the Rock Island Frisco System; while the ratio of expenses to the earnings was about the same.

The Iron Mountain expended $576.00 per mile of road more, during the six months, for its operation, than the Frisco Rock Island, and yet the ratio of expenses to operation was practically the same.

The ratio of operating expenses of the Illinois Central Railroad was 74.39 per cent, while that of the Southern was substantially the same.

The Illinois Central Railroad, however, expended $4,380.00 per mile of road, in its operation, while the Southern Railway expended $2,966.21 per mile, or, $1,313.00 per mile of road, less. Yet their ratio of the expenses of operation to gross earnings is substantially the same.

Q. Is this cost of operation, growing out of the increased expenses, on account of the higher cost of labor and material, and the change affected by the regulation of the Interstate Commerce Commission as to the manner of keeping certain accounts, common to all the railroads in this country?

A. Yes, they are all subject to the same expenses.

Q. Is the increased cost to which you referred, as growing out of the increase in the price of labor and material, and the manner of keeping the accounts according to the change made by the
1007 Interstate Commerce Commission, temporary or permanent in its character?

A. So far as we know, it is permanent. The Commission has made no change, and presumably, their classification will continue.

Q. How is it as to the increase in the cost of labor?

A. The tendency in the cost of labor is for further increase. The railroads are confronted with further demands at the present time.

Q. Were the increases that you mentioned, the result of the demand of organized labor?

A. They were made at the demand of committees representing the Railway Companies' employés, in each branch of the classified service.

The organizations themselves do not deal with the Railway Companies, except on appeal.

Q. Do you mean that they do deal with them indirectly, through their committees?

A. I mean that each organization has a "Grievance Committee" which takes up these matters with the Railway Company. This Committee consists of employès of the railway concerned.

If this Committee is unable to agree with the officers of the Railway Company, their employers, then it becomes a matter of negotiation, on appeal, with the officers of those organizations.

Q. In your experience in railroad operation, what have you
1008 found to be the character, as to permanency, of increases in wages brought about in the manner as the increase in regard to which you have testified was brought about, in the years 1907 and 1908?

A. The increases in wages made by a railroad company are permanent.

Q. What is the tendency, judging from your experience in railroad operation during the last ten years, of prices of material used in maintenance and equipment?

A. Upward.

Q. In compiling Exhibit No. 3, I understand that the Accounting Department ascertained all the expense chargeable to the State of Arkansas, for both intrastate, interstate and miscellaneous traffic, on the basis of actual expenditures, as far as possible, and then assigned to the intrastate traffic a portion of the total expense of the State of Arkansas, based upon the percentage of intrastate revenue to the total revenue.

Discarding the fact that the basis used was "the revenue earned in each class of traffic" do you think the plan of assigning to intra-

state traffic a portion of all the operating expenses, is a correct basis; or is it possible to separate intra-tate and interstate expenses in detail, as freight and passenger expenses are separated?

A. No; the intrastate and interstate expenses are interwoven in every operating account and inseparable on any basis of keeping detailed accounts with which I am familiar, or of which I ever heard.

1009 Q. What units of measure run through railroad operation, and for what purpose are they useful? Can any of these units be employed to show the cost of transportation of any particular commodities, or the cost of service as between freight and passenger, or the cost as between intrastate and interstate traffic?

I wish you would state your views fully and give such illustrations and reasons as occur to you on this subject.

A. There are several measures that run through railway operation, of which a record is kept and which serve various purposes, useful in the analysis of railway operation and as testing the efficiency of railway operation.

The first is the measure of "train mileage."

Second, the measure of "car miles."

Third, the measure of the "number of tons."

Fourth, the measure of the "number of passengers."

Fifth, the measure of "ton miles."

Sixth, the measure of "passenger miles."

The "train mile" measure being divided between freight and passenger service, may be followed in dividing the common expenses as between freight and passenger traffic. That is: the expenses that are common to both, but it must be discarded in any consideration of division between intrastate and interstate traffic, for various reasons, among which are, that it represents trains carrying both classes of traffic, and it also represents empty cars, the ultimate assignment of which cannot be determined, and which, in themselves, yield no revenue.

1010 Then again: in conditions where the traffic of a railroad is not balanced in both directions, it may represent trains making no earnings whatever. That is: an engine and caboose, run from one end of the division to the other, to take a train or return a train.

It does serve in railway operation as one of the factors in determining operating efficiency, in showing the average train haul, and tons per train mile, as all of the freight train mileage must be taken into consideration in any statistics that are prepared for comparative purposes, or for the study of railway operation.

It is further useful in other statistics that the railway uses; in testing the efficiency of various divisions, or its operation generally.

The measure of "car miles" is as impracticable as the measure of "train miles," but this measure is used in determining car efficiency, and for many other statistical purposes.

As a measure of the cost of handling traffic generally, or as a basis for determining the relative cost of handling intrastate and interstate traffic, the measure of car miles is not practicable.

While the mileage of the loaded and empty cars is kept separately, the purposes to which the empty cars will be put cannot be determined, and with the loaded cars themselves, there is a varying degree of tonnage. Some may have a very small amount. Others may have a greater amount. Still others may contain the maximum tonnage of the capacity of the car.

1011 To use a car basis to determine cost generally, would put all loaded cars on the same basis: those containing a ton: those containing two tons, three, five, ten or forty.

A car with two tons would represent in the cost generally as much as a car containing forty tons.

Cars, like trains, also handle both intrastate and interstate freight, and in varying quantities. It would not be possible to determine what part of the car pertains to the State and what part to the interstate traffic; or the relative distance that either traveled, as a determining basis on the car lines.

The part of the load in the car that was intrastate might travel a fraction of the distance of the part of the load that was interstate. Yet the car would travel the whole distance and would be represented by car miles.

The third measure that the Railway Company keeps a measure of is "tons". But this measure is useful only for minor purposes.

Unless tons are combined with some other factors they do not represent transportation.

The minor uses for which tons are employed may be the quantity handled by the men employed, and for some other purposes of statistics generally, interesting to the Railway Company.

What is true of tons is also true of passengers.

The number of passengers must be combined with some other factor, to be of very much use to the Railway.

1012 And both of these measures must be discarded as available to determine cost of transportation, or for determining the relative cost as between intrastate and interstate traffic.

The measure of ton miles is useful to the Railway Company in determining its operating efficiency. It is made up of tons, multiplied by the miles they move.

The Railway Company establishes by accurate test, the hauling capacity of each locomotive, over a particular district or division to which it is assigned, and this establishes a measure that we designate as the "potential capacity" of the locomotive, and the number of tons that locomotive draws from day to day is recorded. to determine whether the operating officers in charge of the various divisions or districts, are securing the full measure of the efficiency of the power.

However, this operating efficiency is determined not on the net ton miles, but on the gross tonnage, which is reached by combining the weight of the cars themselves, with the weight of their contents. It would also include the weight of the empty cars which may constitute a portion of the train.

Under this method of operation the Railway is enabled to secure, or is more able to secure, the potentiality of its power; at least in

one direction—that of the heavy traffic, and run no more trains than are necessary to handle the tonnage offered.

In the ultimate statistics, the average ton miles of the freight itself, per train mile, will appear, and there is perhaps a relation,

months with each other, and years with each other, that
1013 is useful for comparative purposes, but we do not determine

the efficiency of our power, or our operation, by net ton miles, but by "gross ton miles," and taken in connection with the potentiality of the power assigned to the division or district.

The ton miles are not used in operation to ascertain cost of transportation of any class, of freight or of any commodity, but as determining the efficiency of operation, and the comparison is made by each district or division with itself, and not with another district or division where the conditions may be dissimilar, nor in different periods, where the conditions may be dissimilar. Not a preceding month with a following month, nor a summer month with a winter month; or a spring month with a fall month.

The effort is for comparative purposes, to see what has been done during the period, where the conditions of weather, traffic, etc., are similar.

The "ton mile" basis has been considered academically and discussed as available for the purposes of determining cost, but it will not bear the application of practical facts, nor stand an analysis from an operating standpoint.

It must assume, if it is to truthfully reflect the cost of operation, that all commodities can be reduced to a common basis of transportation cost.

Further, it must assume that all conditions on Railway Com-

panies are alike, and that the conditions on each Railway
1014 are alike in all of its parts, divisions and districts.

It must assume also, that a short haul and a long haul of traffic may be made at pro rata cost.

It must likewise assume that the efficiency of the cars in intrastate and interstate traffic is equal.

It must also assume that every ton mile moved over the Railway uses all the facilities that every ton mile moved over the Railway uses, and that every ton mile moved over the Railway uses all the facilities as provided by the Railway Company for its operation.

The first assumption: that all commodities are susceptible of reduction to a common basis of transportation cost, disregards the value, character and risk attached to their transportation, and whether the commodities are transported in carloads or in less than carloads. Whether the work of loading and unloading the car is performed by its own employés and at its own cost, or whether the cars are loaded and unloaded by the owners of the property, at their cost.

This is an important element of consideration, because the handling, loading and unloading of freight by the employés of the Railway Company entails a large cost, which extends all along the line of operation. It embraces the accounting features, the service

of agents, clerks, cashiers, checkers, inspectors, freight house foremen, truckmen and laborers.

The first assumption will place the transportation of live
1015 stock on the same basis as sand, and merchandise on the same level as coal or brick. Poultry on the level of cement and vegetables on the same basis as lumber, and other heavy articles. Arkansas fruits would be placed on a level with Batesville stone.

This assumption must blend all commodities in one common mass: livestock, merchandise, poultry, fruit, fresh meats, vegetables, coal, stone, sand, salt and lumber, regardless of the character, value, bulk and risk, and proceed on the theory that the cost of transportation of each one of these articles is equal.

The Railway is exposed to the payment of claims, in the transportation of poultry, fresh meats, fruits and vegetables, that would not attach to very many other articles, and which do not result from accident, rough handling or casualty.

These claims are for deterioration of the property itself and arise from delay.

This is a special risk that follows the transportation of the articles mentioned, and will result even when no other part of the freight in the trains handling them is subject to any claim.

For example, a train might consist of thirty cars, of which five are fruit and vegetables, poultry and fresh meats. A claim would arise for delay on one-sixth of the number of cars in the train, and possibly one-sixth of the ton miles made by that train, which must be paid.

No other claim would be presented for loss or damage, or
1016 other expense, to the five-sixths of the traffic represented either by tonnage or ton miles.

Again, uninterrupted movement must be given to this perishable freight, which means that the train containing it must have precedence over other freight trains moving in the same and in opposite directions. This occasions delay to the other trains and results in the payment of overtime.

What is true of fruits, vegetables, poultry and fresh meats, is also true of all other perishable freight.

The claims for loss and damage to sand, stone, coal, cement, lumber and other kindred commodities, are a small part of the Railway Company's "casualty account;" while the claims attaching to perishable freight and to merchandise, form a heavy element of such expense.

For illustration: A train may consist of thirty carloads of freight. Twenty-nine of these cars may be coal, stone, cement, sand and lumber, and one car of merchandise; the single car of merchandise representing, say five tons, and the other freight 1100 tons.

In the event of a wreck, the claim following the damage to the single car of merchandise, would be several times the claim that would follow for damage of the remaining twenty-nine cars.

In other words, one-half of one per cent of the tonnage of that train, and substantially, perhaps, a lesser amount of the ton miles,

would bear a greater cost for casualty than the other ninety-nine and one-half per cent, because of the indestructible character
1017 of the other traffic and the maximum of salvage.

The element of risk is of no small importance to a Railway Company, as may be seen from an examination of statement number 4, Exhibit number 3, "loss and damage to freight in transit" which in Arkansas, in a period of six months, amounted to $127,509.38.

Again: Merchandise is a class of traffic exposed to loss and damage generally, which does not apply to heavier and coarser freight, resulting in increasing what we term the "casualty account" or the "casualty expense."

For example: certain articles of merchandise are fragile. Their transportation may result, and frequently does result, in loss, where no casualty has occurred, or no rough handling has taken place while they were moving over the line.

These articles are eggs, window glass and mirrors, bottles, carboys and other glass receptacles containing acids, other fluids and chemicals; drugs, liquor and canned goods in glass; oils and other fluids in cans; electrical apparatus; china; glassware and chimneys; light furniture; sewing machines; show cases; signs; marble, and a large variety of other articles.

An application of the ton mile theory basis of consideration would assume that the risk attached to the transportation of these articles, and the ton mile average loss, would be no greater than on stone, coal and other like commodities.

Again: there is a risk of leakage of fluids that the Railway
1018 Company carries in any receptacle, barrels, glass carboys, etc., which the ton mile theory would regard on the same basis as solids, which are not exposed to this character of loss.

Merchandise is made up, to a very large extent, of packages of articles of wearing apparel, edibles and luxuries, clothing, furnishing goods, caps, shoes, dry goods, canned goods, crackers, candies and sweets of various kinds, cigars, tobaccos, liquors, beer, wines—all of which tempt theft and robbery, which is one of the considerable elements of loss that enter into the Railway's casualty account.

The risk of robbery attached to the transportation of articles of this character would be considered on the ton mile theory of dividing the expenses of operation, as no greater than on sand, stone and lumber.

Another element of loss that enters into the Railway Company's casualty account, is that of wet and waste. The damage and waste that is occasioned by water, which may be either at the loading or unloading point, or in transit.

This would apply particularly to flour and to grain. It may be true that a car has a leaky roof, or the water may beat in at the doors, and these articles be damaged. But the same car would have transported brick, sand, drain tile and a multitude of other articles, without causing any deterioration or injury to the property, or result in any claims being made upon the Railway Company.

1019 The ton mile theory of dividing operating expenses would put these articles subject to such damage, and which, in

practical operation are damaged on the same basis of risk and cost for claims, as the articles which could have been transported in the same car without damage from this cause.

Another part of the "casualty account" is made up of what is called "concealed losses."

These are shortages from packages, on being opened at their destination, and may have been caused by the package being opened in transit and the articles removed, or may have been caused by the articles never being packed.

The only action the Railway Company can take in such cases, however, is to pay the loss, after requiring an affidavit from the person who actually packed the goods, that they were placed in the packages at the time of delivery to the Railway Company.

This character of loss does not obtain on other articles than merchandise, and the ton mile basis of dividing operating expenses would apply to the line, stone, sand and other traffic, the element of "concealed losses."

One of the largest elements in making up the freight casualty account, arises from packages going astray.

A single ton of merchandise may and does consist of many separate packages, and each of these packages must be accounted for on delivery, exactly as a whole ton of some heavier single article.

The number of packages, say in forty tons of merchandise, must be accounted for with the same accuracy as a forty ton car-
1020 load of stone, sand, gravel and other commodities.

The transportation, however, of such a large number of packages, of itself creates a liability of loss, when compared with other freight that is going astray.

This is uncertain. It may arise from robbery, which the Company is unable to fix specifically at any point; or, it may occur through the error of the check clerk, or an inspector, or a truckman taking the packages to another car instead of the one to which it should properly go.

For example, a dozen packages for Little Rock may be, by mistake, loaded into a car for Colorado at St. Louis a dozen packages for Russellville or Conway, or Morrilton, may be loaded into a car at Little Rock which is destined to some remote point in Texas, and in neither case may the traffic ever be heard from.

In the multitude of packages that a railway company handles we cannot, of course, be perfect.

Reliance must be placed on a large number of people, and the illustrations that I have given are not extravagant.

The ton mile basis of dividing expenses would place the same hazard of loss on the handling of the several hundred packages that would go to make up forty tons of merchandise as a hazard upon a single car of stone, salt, lumber, saw-logs or cooperage.

1021 The ton mile basis must assume a good many things which analysis shows are not reasonable or true.

It must assume, first, that the conditions on all railroads are alike, if it is to be used for determining cost, and that the conditions on all of the divisions of the same railroad are similar; while in practical

operation the cost as represented by tons, and the items of expense divided and productive of ton miles, on one division of a railway as compared with another division may vary as much as 100%, in Arkansas say, as between the Memphis and the Arkansas Divisions, both wholly within the State of Arkansas.

Under conditions of traffic and weather the cost of operation ascertained on that basis might vary as much as 50% on a single division with itself.

The first general division of freight traffic handled by a railway is as between carload freight and less than carload freight.

Carload freight consists of commodities loaded as a rule to the full capacity of the car; at least to the minimum prescribed by the tariff, and is rated at so much per hundred pounds for the entire load.

1022 This freight is loaded by the shipper at his own expense and unloaded by the consignee at destination, at his expense, and the precedure for the handling of this traffic is the switching of this empty car to the mill, yard, warehouse or elevator or other point where the industry is located, or to a public team track, where the shipper loads it.

He goes to the station and gives directions for its billing. The car is billed by the agent as a single item and the car is taken up by a passing train and moved to its destination, where it is switched to a private track or a public or team track, where it is unloaded by the consignee at his own expense, the agent at destination collecting the charges as a single item, abstracting the way-bill and making his reports to the Auditor on the basis of a single item of one car load consisting of so many thousand pounds.

This car makes the full measure of the ton miles from the point of origin to its destination.

If it is an intrastate shipment the expense mentioned at both terminals is a charge to the operating expenses of the State of Arkansas and is reflected in the exhibit showing this expense.

If it is an interstate shipment the expense at one end is chargeable to Arkansas only. The other terminal expense is charged to the cost of operation in another State.

1023 If it is a trans-state shipment it has neither of these terminal expenses and no charge appears in the expense of Arkansas as shown in these exhibits therefor.

The other broad distinction, less than car load freight, does not necessarily mean less than a car load of freight or less than a car will hold.

It may be a full car load of merchandise consigned to one party, or to various parties, at one point, or to various parties living at different points.

It is a package freight as distinguished from a car load freight, which I have described.

There may be as many consignees as there are packages or all of the packages may belong to one consignee. This package freight is the lightest loading of any traffic that a railway company handles.

That is to say, that it loads less per car, the average not exceeding 5 tons, while frequently it is much less.

The contrast with the work falling upon the station in billing the one car alone that I have just described, with the handling of less than car load freight, may be illustrated by a test made by our agent at Little Rock under my direction taking five cars of freight of less than car load freight each day for five days, making 25 cars.

The first five cars representing one day required 24 way bills and consisted of 70 consignments.

The second 5 cars required the making of 24 way bills and
1024 consisted of 64 consignments.

The third 5 cars required 27 way bills and consisted of 85 consignments.

The fourth 5 cars required 20 way bills and consisted of 59 consignments.

While the fifth 5 cars required 25 way bills and consisted of 110 consignments.

These 25 cars required 120 way bills and covered 388 consignments. For the purpose of further illustration we will assume that the cars contained 5 tons each, or 125 tons, against 25 cars of car load freight containing the maximum of 40 tons each or 1000 tons.

The process or steps taken in handling this freight requires something more than the mere making of the additional way bills.

These way bills must show 388 separate items or consignments and must be reported as against 25 in the car load freight for a similar number of cars.

These 388 packages are received at the door of the freight house, checked, weighed, billed, and trucked to a car into which they are to be loaded, all of which steps are necessary in the orderly and secure handling of the traffic.

This variety of steps puts upon the Railway Company many times the cost for labor to secure but a fraction of the ton miles compared with the 25 cars of car load freight through which the maxi-
1025 mum ton miles are secured and which I have used comparatively in this illustration.

This less than car load freight on arrival at its destination must be unloaded by labor employed by the Railway Company and each individual package be accounted for. It involves largely a repetition of the steps observed in its loading, the collection of the freight charges checking of the freight, its trucking to the warehouse, the making of the reports to the Auditor, etc.

This process of handling less than car load freight is the same whether it is interstate, intrastate or trans-state.

If it is intra-state freight it bears the cost of the handling at both loading point and destination.

If it is interstate freight either the loading cost or the unloading cost is borne by some other State.

If it is trans-state freight it has neither of these costs and no expense for such handling would attach to or is embraced in the exhibits of cost filed in this case.

The ton mile theory assumes that the cost of these various steps,

the large clerical work necessary, the physical labor employed in handling this package freight in these 25 cars, is no greater than the cost of the 25 cars of the car load freight.

All of the cost for labor of the handling of the less than car load freight has been performed by the employees of the Com-
1026 pany, while the car load freight has been handled at the cost of the owners.

As the average of package freight does not exceed five tons to the car the maximum of the ton miles accomplished in the same distance by the 25 cars of less than car load freight would be one eighth of the ton miles accomplished by the 25 cars of car load freight. But on the ton mile basis of dividing expenses the 25 cars of car load freight (assuming that the distance traveled is the same) would bear a cost eight times greater than the 25 cars of less than car load freight.

1027 C. J. McPHERSON.

Direct examination resumed.

By Mr. MOORE:

Q. Mr. McPherson, when we adjourned you were speaking about the ton mile basis for dividing expenses of operation. If there is anything further you wish to say on that you may proceed.

A. That a short haul and a long haul can be made at pro rata cost, it hardly seems should receive serious consideration. Yet the ton mile theory or basis of the division of expenses, must assume this to be true, or it fails as a basis for the purpose.

The ratio of the cost of transportation, whether of carload freight or less than carload freight, increases as the length of the haul diminishes, because of the increased terminal expense.

The distance between the point of origin and the destination, shortens, and the number of terminals used, multiply.
1028 This may be illustrated in various ways.

Take five cars of less than carload freight, loaded to the maximum, say five tons, from Little Rock to Malvern. This is 42 miles south of Little Rock.

These five cars would represent 1075 ton miles, in the ton mile account.

A single maximum carload of brick from Malvern to Little Rock, would represent 1720 ton miles, in the ton mile account.

The expense of the transportation of these six cars—that is, five cars of less than carload, and the one carload of brick, would, on the ton mile basis be divided—61 per cent for the carload of brick, and 39 per cent for the five cars of less than carload freight.

The five cars of merchandise handled by the Railway Company at its entire cost, in the laborious process that I have described, would bear, on the ton mile basis of division of expenses, but 39 per cent; while a single carload of brick that was loaded and unloaded by the owner, would bear 61 per cent of the cost of the transportation of the six cars.

The aggregate of the ton mile account is made up of shipments

weighing less than 100 pounds, to those weighing forty tons, and for every distance, from five miles to the extreme length of haul in the state.

Exhibit 26 gives an analysis of the tonnage for the month of October 1907, and shows that the average interstate haul is 218.16 miles; while the average intrastate haul is 72.21 miles.

1029 Exhibit number 5, however, shows that for the six months —July to December 1907, inclusive, the average of the interstate haul is 224 miles, while the average intrastate haul is 70 miles.

The distance from Texarkana to Nucells, Arkansas, happens to be exactly 224 miles, the average miles made by the interstate shipments.

And the distance from Corning to Nucells is 70 miles, the average distance made by intrastate shipments.

A maximum carload of freight originating in Texas, coming to the Iron Mountain at Texarkana, would make 8960 ton miles from Texarkana to Nucells.

Three cars, each of equal tonnage, loaded at Corning for Nucells, and one maximum car loaded at Tuckerman to Nucells, 14 miles, would make 8960 miles, or the same ton mile equivalent.

That is to say: the single car from Texarkana to Nucells compare with the three cars from Corning to Nucells, and the one from Tuckerman to Nucells, would make the same ton mile equivalent, 8960 ton miles.

But one car would be used for the interstate shipment and but one terminal expense would be involved, that of accounting for the car at Nucells; while four cars must be employed in obtaining the same ton mile equivalent in the intrastate traffic, from Corning and Tuckerman, to Nucells.

1030 And eight terminal expense- would attach—four at Corning and Tuckerman, and four at Nuckles. That is, a terminal expense would attach to each one of the cars at its loading point and to each one of the cars at its unloading point.

One car would be employed in the interstate shipment, and four cars in the intrastate shipment.

Under the prevailing custom, and the law of Arkansas, shippers are permitted to hold cars forty-eight hours in loading, and consignees are allowed to hold the cars a similar length of time, forty-eight hours, in unloading.

As a consequence, the Railway Company loses the use of the single car containing the interstate shipment, forty-eight hours; while it loses the use of the four cars in the intrastate shipments, forty-eight hours each, in loading, and forty-eight hours each in unloading.

Reducing this to days, the Railway is deprived of the use of the interstate car two days, and of the four intrastate cars sixteen days.

The Railway must provide, therefore, eight times the number of cars in intrastate freight that it provides to care for the interstate freight, and be put to expense in that relation in the maintenance and depreciation of equipment.

Even if the maximum allowance of forty-eight hours is not consumed in the average time of loading and unloading, the ratio would

still remain eight to one, whether it was one and one-half days instead of two days, or one and one-quarter days, or one day, the ratio of eight to one would still continue.

1031 A terminal expense attaching to any shipment, either carload or less than carload, is as great for five miles as it is for five hundred miles, and the multiples between will show the increasing expense that attaches to short hauls.

The terminal expense incident to shipping a ton of merchandise from Little Rock to Jacksonville, thirteen miles, is as great as shipping a ton of merchandise from Little Rock to Van Buren, 153 miles, and, as the terminal expense forms eighteen per cent of the total operating cost, the ton mile basis of division of expense would eliminate just that percentage of the cost from consideration.

The ton mile basis makes no provision for terminal expenses, because there are no ton miles at terminals that represent the expense. It only attaches as a unit of measurement between two given points, the beginning and the end of the journey, but does not consider the expense at either end. It cannot measure the expense at either end.

It is all the same, in the ton mile basis of dividing expenses, whether a train starting with thirty cars, running one hundred miles, sets out the entire thirty cars en route and picks up thirty additional cars, at thirty different stations; that is, picking up a car every time it sets one out.

It makes no allowance for the additional strain on the locomotive; on the switches; use of sidetracks, or additional fuel and other supplies, that would attend the handling of such a train. Nor for the expense of any of the intermediate stations, in preparing the

1032 thirty carloads for shipment, and in the delivery of the thirty carloads that were set out.

The ton mile basis of dividing expenses must assume, among other things, that every ton mile moved over the Railway uses all of the facilities that every ton mile uses, and there is, therefore, no general classification of traffic.

Furthermore, that every ton of freight moved over the Railway must use all of the facilities that the Railway provides for the conduct of its freight business.

It would impose as much cost per ton mile, upon traffic moving between adjoining and distant states, merely through the state on the Railway Company's line, and which did not use the facilities established for the handling of intrastate and interstate traffic, with as great a charge of the cost of the entire operation of the Railway, as the traffic that did make use of these facilities, and for whose use they were provided.

In Railway operation it is necessary to provide station and other buildings; house tracks; tracks on which freight is loaded and unloaded at freight houses; public and team tracks, where carload freight is loaded and unloaded; sidetracks to industries, such as mills, elevators, lumber yards, coal yards and manufacturing establishments, to enable the intrastate and interstate traffic to be handled in an economical way, both by the Railroad and by the public.

It is also necessary to have station organizations—agents, cashiers,

clerks, and laborers for handling freight. Also many other
1033 employés, incident to general operation.

Trans-state traffic—that is, freight passing through the state, would make no use of the facilities I have mentioned, and but a trifling use of the station organizations—only such as the car clerks and others who make car reports and keep the car records.

Many stations have more or less extensive yards at which switch engines are employed. These make it necessary to have a yard organization, as well.

At local stations where switch engines are used, they are required merely for switching the interstate and intrastate traffic to and from industries, freight houses, and the public or team tracks.

Classification yards are usually located at division points; as a rule, in the larger cities, and a large proportion of the yard organization in such cities is employed for the same class of switching as at local stations. That is, in handling cars to and from industries, freight houses, public and team tracks.

A certain part of the locomotives, however, are required in the classification yard, as is also a part of the yard organization, and it is in the classification yards where trains are broken up, classified and dispatched.

Strictly speaking, no part of the yard organization cost, nor of the service of switching engines, is chargeable to trans-state traffic.

1034 There is nothing to be done with trans-state traffic passing through the state but to give it straight away movement. The trains must be broken up at these division terminals, incidental to taking off the state and interstate traffic as may have its destination at such points, or, on lines radiating therefrom.

To increase the efficiency of operation and give the potential tonnage to locomotives, other cars must be added, and these may be intrastate, interstate or trans-state cars.

This brings about, of course, the physical handling of this trans-state traffic in these classification yards, and at times other trains may pick up trans-state traffic that has been set out because of blockade, embargo or some disarrangement of the orderly course of procedure, such as wrecks and washouts.

This, however, is not due to any requirement of the trans-state traffic. It arises from physical conditions in the state of Arkansas; either from floods, casualties, or other disturbances of the orderly movement of business.

Again: of the main track mileage in Arkansas, approximately eight per cent could not be used in making trans-state movements. So but ninety-two per cent of the main track could, under any circumstances, be used by that class of traffic.

Exhibit number 26 shows, that of the entire freight traffic of Arkansas—that is, the entire freight traffic touching Arkansas, 51.61 per cent, measured by ton miles, consists of this independent traffic.

1035 This is traffic that passes over the Railway through the state of Arkansas, which originates in a neighboring or distant state and terminates in a neighboring or distant state.

More than one-half of the entire freight traffic is of this character and makes no use of the facilities I have described, and could make use of but ninety-two per cent of the main track mileage in the state.

Of the station organization, it would make use of eight and one-half per cent, and, even assuming that a portion of yard organization and expense should be charged to this class of traffic for the physical handling given to the traffic (for which it is not responsible, and which, in my opinion, would not be equitable) fifteen per cent would be a liberal allowance.

More than one-half, therefore, of all of the freight traffic represented by ton miles, touching Arkansas, could make use, under any circumstances, of but ninety-two per cent of the entire main track mileage; eight and one-half per cent of expense of station organization, and, on the most liberal basis, fifteen per cent of the cost of yard organization, operation and maintenance of yards and locomotives; while 48.84 per cent of the entire traffic is chargeable with 100 per cent of the Railway Company's main track mileage; 91½ per cent of station organization, and, on the basis given 85 per cent of yard organization, maintenance and operation, and should be charged with all the maintenance of industrial tracks, of
1036 freight station buildings, and the other buildings which are used only by traffic representing this portion of the whole. That is, the intrastate and the strictly interstate.

The ton mile theory of dividing the expenses of operation would ignore the largest primary features of the traffic, and would impose upon the trans-state traffic an equal burden of expense and operation as upon intrastate and interstate traffic, charging its transportation with the maintenance and operation of main line track which it did not touch; with facilities that it did not and could not use, and with the wages of men whose duties have no connection with it; with the maintenance of buildings and tracks, without the existence of which this freight could move with equal facility; with taxes on facilities the use of which it did not need or enjoy; and other expenses incidental to traffic having its origin or destination, or both, in the state.

The ton mile theory must, therefore, in respect to trans-state traffic, assume that this class of traffic does make use of these facilities, in proportion to the other traffic of the state; otherwise the ton mile basis of the division of operating expenses would be unsound.

It must assume as true something that is not true, to give it even academic consideration.

Ton miles measure distance as applied to efficiency; they do not measure the objective points which carry with them, in railway operation, a large part of the expense, because the objective
1037 points have no ton miles; and the ton mile theory applied to a division of the expenses of railway operation, considers one factor only—that of the rolling expense, and not the stationary or terminal expense.

The stationary or terminal expense, which is a very large part of the cost of railway operation, cannot be measured by ton miles.

The ton mile basis of dividing expenses cannot even measure properly the rolling expense, because the length of haul is an insurmountable obstacle.

Ton miles measure only efficiency for the purposes of the Railway Company. The efficiency of its operation. That is: to see whether the locomotive is started from its initial point with a tonnage it is capable of handling; and whether, if it has set out tonnage, it has picked up other tonnage to preserve the potential average between its objective points.

The average ton mile earnings have been used as a unit, and are used comparatively to ascertain the average result of all of the freight traffic of the Railway, and its value for statistical purposes is much that of the ton mile standard of measuring efficiency; it is merely a statistical instrument, to show a general average of rates for the expenditure of energy involved.

It merely shows the general average of revenue derived from the transportation of different goods. It does not establish the rate.

1038 The unit of passenger miles, in my opinion, is not practicable for the purpose of dividing the expenses of operation between intrastate and interstate passenger traffic.

It would assume, as in the freight traffic, that a short journey and a long journey, should be made a pro rata cost to the Railway. It would asume that no greater expense attaches to several handlings of baggage, than to one handling.

It would assume that the accounting expenses for a large number of tickets sold, is no greater than for a smaller number, and would fail to consider the exposure to danger, and consequent claims for injury, due to the relative number of passengers in boarding and leaving trains.

That there was no greater danger from personal injuries, and no greater number of claims made, or amounts paid, where the relation exists of eight passengers in the state traffic boarding and leaving trains, to one in the interstate traffic.

Exhibit 5, filed in this case, shows that the average length of haul of an intrastate passenger, is thirty miles, while that of an interstate passenger is one hundred eighteen miles.

Four times the number of local passengers must be hauled to equal the passenger miles of an interstate passenger, and this results in eight times the terminal expense for the local passenger traffic to that which follows interstate.

That is to say: three passengers travel thirty miles, and a fourth twenty-eight miles; while an interstate passenger makes an uninterupted journey of one hundred eighteen miles.

1039 The Railway Company must provide labor to handle its baggage at the stations; baggage trucks and other facilities, all of which are a charge to the operation of passenger traffic.

It is the number of times that these facilities are used that makes the expense large or small.

Again: where it is necessary to enlarge the depots, build additions and make other changes, it is because of the number of passengers using such waiting-rooms or buildings.

Exhibit number 5, shows that 257,950 interstate passengers were transported during the six months covered in this analysis, and that 1,444,540 intrastate passengers were transported during the same period; or, nearly six to one; while the passenger miles made by the 257,950 interstate passengers was 30,486,624, and by the 1,444,540 intra-state passengers 43,355,996.

The 257,950 interstate passengers (which was but 15 per cent of the total number of passengers) made 41.29 per cent of the passenger miles; while the 1,444,540 intrastate passengers (which was 85 per cent of the total number of passengers) made 58.71 per cent of the total passenger miles.

This is illustrative of the length of haul.

The occupation and use of the station facilities, and use of station force, was, therefore, eight per cent for interstate passengers, and ninety-two per cent for intrastate passengers.

On the basis of using passenger miles to determine the relative expenses of use of facilities, in Arkansas, would be 41.29%
1040 for interstate, instead of eight per cent (which actually used them), and 58.71 per cent of intrastate passengers, instead of ninety-two per cent (which actually made use of them).

The through passenger trains, which carry the larger part of the interstate passengers, make an average stop between Moark—the Missouri-Arkansas state line, and Texarkana, at intervals of thirty-five miles; while the local trains between these points average a stop every five miles.

The local trains, therefore, stop seven times as frequently, in local service as in through passenger service, on that portion of the road on which the greatest number of interstate passengers are carried.

The passenger mile division of expense would fail to consider the expense incident to the operation of trains which run thirty-five miles between stops, and those that average but five miles between stops, while the expense incident to the frequent stoppage is relatively seven times greater.

The strain to equipment is largely incident to the starting and stopping of trains, and deterioration and more frequent repairs arise from this cause; while greater energy is required to start and stop the trains than for through movement after they attain their momentum.

On the other divisions of the road in Arkansas, all the passenger trains make the local stops.

There is an exception on the Central division, the night train between Little Rock and Van Buren, where the average stop
1041 is at intervals of seventeen miles. But the other trains, the local trains generally in Arkansas, make an average stop every five miles.

The failure of the passenger mile basis of dividing expenses to consider these elements of manifest difference in cost of operation, to which the Railway Company must be put, and, as I have ex-

plained, in the handling of intrastate passenger traffic and interstate passenger traffic, that basis, in my opinion, would not express a truthful result.

These are the measures that run through the operation of a Railway and of which record is kept for the many purposes explained, and which form to a very considerable extent, the statistical basis of the Railway operating department.

In my opinion, none of them, for the reasons which I have given, can be used for the purpose of dividing the expense of operation between intrastate and interstate traffic.

Q. State what, in your opinion, is the best basis upon which to divide the expenses of operation, as between intrastate and interstate traffic.

A. The natural basis for dividing the cost of intrastate and interstate business, respectively, would, in my opinion, be the proportionate revenue derived from each.

This may be designated as the "revenue basis."

To this basis as a fundamental one, should be added such additional cost as may attach to the handling of intrastate business, over that of the interstate.

1042 My reasons for this opinion are that the revenues of the Railway are derived from different sources: the transportation of passengers and freight, and from miscellaneous services rendered; rentals, etc.

A division of these earnings can be exactly ascertained and naturally, they reflect the value to the Railway of each class of the service it performs.

The passenger and freight revenue consist of both intrastate and interstate traffic; the revenue from each of which can also be exactly ascertained.

Moreover, the "revenue basis" is reflective of the efforts of the traffic men who make the rates, to consider, in a measure, the value and character of commodities, and the risk and distance attached to their transportation.

This is apparent in the classification of commodities into classes and the different rates established for their carriage.

The revenue derived represents the well established and generally recognized elements considered in fixing rates of the Railway for the service it performs.

The rates on first-class freight are higher than on second-class. On second-class higher than on third class, and so on through the general classification and established schedule of rates.

Differentiation in the commodities and rates is recognized by the Railways; by the public for whom the commodities are transported, and by all of the Railway Commissions.

1043 Q. You mean the officials of the State

A. State and Interstate Railway Commissions.

The revenue, therefore, expresses value, character, risk and distance, rather than quantity; and likewise considers, to no little extent, the question of cost, as it is obvious that it costs more to transport some commodities, and commodities in small quantities, than it does other commodities, and commodities in larger quantities.

A consideration, therefore, of cost on the mere basis of quantity, would mean the blending of all classes of freight; a reduction of all classes of freight to a common unit, and the assumption that the cost of their transportation was equal. Also, that the length of haul and other conditions affecting the cost were equal or the same.

For these reasons, in my opinion, the revenue basis is a proper basis on which to apportion the cost, or to divide the cost of operation as between intrastate and interstate traffic.

Q. Does that apply to both kind of traffic: that is to say, to freight and passenger freight?

A. Yes, it would apply to both classes of traffic.

Q. You referred in your last answer to the difference in cost. Have you given the subject of difference of cost of transportation, as between state and interstate, any consideration?

A. Yes.

Q. I wish you would state, if you have, what the elements
1044 of difference are, and what you regard as the difference in the cost of transportation as between the two kinds of traffic.

A. In my opinion, the cost of handling intrastate freight traffic is several times greater than the cost of handling interstate freight traffic.

The elements of this additional cost are:

First, there is a greater use of the Railway facilities, in proportion to tonnage, by the intrastate freight traffic; a greater cost of maintenance and a heavier terminal cost, than for interstate freight traffic.

The Railway secures less efficiency from its cars used in intrastate freight traffic, in proportion to the relative tonnage, than in the interstate freight traffic; the greater investment in cars that is necessary, and the larger cost for maintenance of cars in intrastate traffic than in interstate traffic, in proportion to the respective tonnage.

My opinion is formed from an application of the facts, to the exhibits in this case; from years of personal observation; from reports made periodically in my office, which I study and compare.

It will be necessary for me to perhaps repeat, to a certain extent, a part of the matter that I have gone over, in discussing the question of other measures of operation.

Q. I wish you would state it just as fully as necessary; the impressions you have and the reasons for them.

1045 A. Exhibit number 26 shows that 51.16 per cent of all the ton miles of freight traffic moved by this Railway, in the State of Arkansas, in the period named, consisted of trans-state traffic—traffic that originated outside of Arkansas and passed through that state into another state.

This is more than one-half of the entire freight traffic, on the ton mile basis, that the Railway moved during the period.

The trans-state traffic merely pass- through the state and use- but a part of the facilities provided by the Railway for handling its business.

This trans-state traffic does not require or use the station organization, the agents, cashiers, collectors, bill clerks, check clerks, and

the numerous other classes of station labor, except yard clerks, who record car numbers and make out car reports; and the callers who call the men that man the trains.

It makes no use of station buildings, except the portion assigned for telegraph purposes; nor of house tracks, where cars are loaded and unloaded; nor of team and public tracks, where carload freight is received and delivered; nor of tracks to elevators and to industries, such as mills, warehouses, coal and lumber yards, storage yards and manufacturing establishments; nor of many buildings and other facilities which are provided to care for traffic, either originating in or destined to points within the state.

This trans-state traffic could be handled with equal dispatch without the facilities I have mentioned.

1046 This trans-state traffic is attended with a very small terminal cost.

The traffic is gathered, weighed, loaded, and billed, in another state through to destination, and requires no accounting nor station labor in Arkansas, except yard and car record clerks, as previously explained.

In the orderly handling of business there are no reasons for trans-state freight, which simply passes through the state, to incur but a minor expense at division yards and junctions; but in practical operation, both intrastate and interstate cars are added to trains in which this traffic is moved, to secure the full efficiency, as far as possible, of the locomotives.

The making up of trains is but a part of the yard work, the engines engaged in such service in classification yards handling cars in large cuts and without extended movements, while in the other yard work, that of switching the house and team tracks, and the delivery of cars to and taking them from industries, mills and warehouses widely scattered, with but a few cars to a trip (sometimes only one) consumes time in both the gathering and distribution of this traffic, which is wholly intrastate and interstate, and none of it trans-state.

Assuming that such physical handling as is given in these yards to trans-state traffic, should be a charge against such traffic (which is not, in my opinion equitable or proper), fifteen per cent of

1047 the yard service in Arkansas would be a liberal allowance therefor.

That is to say: not more than fifteen per cent of the entire cost for yard service and general yard expenses would attach to 51.16 per cent of the freight traffic.

Eighty-five per cent of the entire yard cost and expense would attach to 48.84 per cent, which comprised the intrastate and the interstate freight traffic.

The yard expense amounts to thirteen per cent of the total expense of operation in Arkansas, or $398,806.00 for the six months, July to December 1907.

Of the station expense, which forms five per cent of the entire expense of operation in Arkansas, or, $165,258.00, in the six months, this 51.16 per cent of traffic would make use of only the yard clerks

and car record clerks to the points where records of trans-state traffic were taken.

The total expense for these clerks at such points, amounts to 8.5 per cent of station expense, and but a part of these clerks perform duties incident to such traffic.

The trans-state freight traffic forming more than one-half of the entire traffic of the state, as aforesaid by ton miles, could, under most liberal construction, make use of but fifteen per cent of yard service as against 48.84 per cent constituting the intra and interstate traffic, making use of eighty-five per cent of yard service, and but a part of eight and one-half per cent of station expenses.

Measured by ton miles, the freight traffic touching Ar-
1048 kansas in the month of October, 1907, the month analyzed was; trans-state 51.16 per cent; interstate 40.69 per cent; intra-state 8.15 per cent.

Of this traffic the interstate and intrastate formed 48.84 per cent, and used all of the facilities.

Eliminating the trans-state from consideration, the relation between the interstate and intrastate traffic becomes 83.3 per cent interstate and 16.7 intrastate.

The relative use of all facilities, therefore. made by intrastate traffic 16.7 per cent instead of 8.15 per cent. As 48.84 per cent of the traffic uses all of these facilities, the relation of the intrastate traffic to the 48.84 per cent the interstate and intrastate combined, is 16.7 per cent.

Let me explain here that the term or expression "terminal expense" or "terminal cost" is used in a broad sense, and means the station yard expense, not only at district and division, but at all stations; it also embraces the cost of maintenance of switch engines and side tracks, other than passing tracks, as every station is a terminal for the traffic that it originates or receives.

Every shipment of freight, big and little, regardless of the length of haul, must have two terminal expenses.

Trans-state freight has no terminal expense within the state. The expense at the starting point and at the destination is a part of the expense of operation of other states, and in the exhibits of cost filed in this case none of those expenses are contained for trans-state freight.

1049 Strictly interstate freight, that which originates or terminates in the state of Arkansas has but one of these terminal expenses. The other terminal expense is a charge to the operation of some other state.

Every intrastate shipment in Arkansas has two terminal expenses within the state.

This does not necessarily mean that the relation of terminal expenses of intrastate business is two to one. The average length of haul must be taken to ascertain what that relation really is.

Exhibit #5 shows that for the six months ending Dec. 31, 1907, the average length of haul of all intrastate freight was 70 miles; while the average length of haul of all interstate freight in Arkansas was 224 miles.

This means that each shipment of interstate freight moves on an average of 224 miles with but one terminal expense, either that of forwarding or delivering.

Each intrastate shipment moves on an average of but 70 miles and incurs two terminal costs for that distance.

It follows that to attain the same average length of haul as the interstate that eight terminal costs must be incurred by intrastate freight. That is, eight times the use of the terminal facilities must be made by intrastate freight as compared with one use of the facilities by interstate freight.

The interstate shipment goes 224 miles for one terminal
1050 expense.

The intrastate shipment goes but 70 miles and has two terminal expenses.

Therefore, say for example, 10 tons of interstate freight is moved 224 miles with but one gathering or distributing cost; and ten tons of intrastate freight goes but 70 miles with both the gathering and distributing expenses.

The intrastate ten ton shipment goes 70 miles, with two terminal expenses, another ten tons goes 70 miles further, with two more terminal expenses; a third ten tons goes another 70 miles more with two more terminal expenses; and a fourth ten tons the balance of the distance with two more terminal costs to equal the single interstate shipment.

Ten tons of freight have been loaded four times and unloaded four times, making eight handlings of the intrastate movement of ten tons while it is going 224 miles. While ten tons of interstate freight has been loaded or unloaded but once in moving this same distance.

For the purpose of further illustration, we will take the exact distance that we used before, as that represents the average length of haul of the interstate and intrastate freight.

The distance from Texarkana to Nuckles, Arkansas, is 224 miles, the same distance as the average miles moved by every interstate shipment, in Arkansas.

Mr. HILL:

1051 Q. In referring to interstate in this connection, are you including the trans-state, in making this illustration? You have been using three terms, interstate, intrastate, and trans-state: are you keeping those three terms up in using this illustration or are you merely using interstate? What I believe you call "second class interstate."

A. In a general way, but I have taken the average length of the total interstate and the average length of the total intrastate haul.

Q. The two hundred and twenty-four miles includes the trans-state?

A. Yes, sir, in the 224 miles.

Mr. MOORE:

Q. That includes only the part of the trans-state haul that is in the state of Arkansas.

A. That is all. The trans-state haul is much further as between the two extremes of its movement.

The trans-state haul and the interstate haul would both be very much longer in their average, if we should consider their two extremes.

Here we have confined the consideration to the movement in the state of Arkansas.

Mr. HILL:

Q. Before you make your illustration I simply wanted to know your use of terms.

A. (Continuing:) A car loaded with twenty tons of freight in Texas for Nuckles passes Texarkana and comes through to Nuckles, where it is put on a side track, unloaded, and charges collected
1052 by the agent and remitted, and the other accounting work incident to the transaction is completed.

The car makes 4,480 ton miles. That is, 20 tons multiplied by the distance 224 miles.

The distance from Corning to Nuckles is 70 miles the same distance as the average number of miles made by every intrastate shipment in Arkansas.

Three cars containing twenty tons are loaded at Corning and moved to Nuckles, making 4200 ton miles.

One car containing twenty tons is loaded at Tuckerman and moved to Nuckles, making two hundred and eighty ton miles.

The four cars making 4480 ton miles, the equivalent in that respect to the interstate shipment of one car 224 miles.

Four cars are required to take care of the average intrastate shipment, as against one car for the average interstate shipment. Three cars must be set at Corning and one at Tuckerman, or a total of four cars for loading.

These must be loaded, weighed, billed, and all of the accounting features observed at the loading station; and the same four cars must be set for unloading at Nuckles; unloaded, charges collected and remitted, and all accounting features incident to the transaction at that end of the journey completed.

Each of these four cars has borne a terminal expense at origin and at destination, making eight terminal expenses, as compared
1053 with a single terminal expense of the interstate shipment at Nuckles.

The other terminal expenses on that shipment, the setting the car for loading, its billing, weighing, and the other steps incident to its preparation for movement, are borne by the station at which the car was loaded, in Texas.

The cost of handling business is dependent upon the number of times the terminal is used.

The four intrastate shipments referred to require the services of the station and yard forces, and the use of facilities eight times, to move the twenty tons the same number of ton miles as the single interstate shipment which made the use of station and yard forces and other facilities in the state but once

The terminal cost of a shipment five miles is as great as on a shipment of 50 miles or 150 miles or, in fact, any distance; and the terminal cost to the St. Louis, Iron Mountain & Southern Railway in Arkansas for the six months July to December, 1907, inclusive, was 18% of the entire cost of operation, or $564,064.

In intrastate traffic a greater number of cars is required and a larger investment required in freight car equipment than is required in interstate traffic.

The average length of haul of interstate traffic in the state of Arkansas, as shown in Exhibit 5, is 224 miles; while the average length of every intrastate shipment occurring in the same exhibit is 70 miles.

1054 Even assuming that the average tons loading per car in interstate and intrastate traffic is equal; that is, that each car loaded in each class of traffic contains the same number of tons, four cars to one are necessary to be employed in handling the intrastate over interstate traffic, to secure the same number of ton miles.

This, however, as I have explained before, is not the true ratio. Under the railway practice, and under the laws of Arkansas, forty-eight hours are allowed the shipper for loading and forty-eight are allowed the consignee for unloading every car.

This means, in going back to the illustration just made, that the interstate shipment to Nuckles would result in the company being deprived of the use of one car for forty-eight hours, while in the four intrastate shipments the company would be deprived of four cars ninety-six hours each, or 384 hours.

Reducing this to days the railway company would lose the use of the car containing the interstate shipment two days; while it would be deprived of the use of the four cars in the intrastate shipment sixteen days. This makes the ratio eight to one.

Eight cars for the use of intrastate freight as against one car in interstate freight.

1055 As I have explained before, even though the full forty-eight hours were not used in every case, that is to say if the average were lower, if it were one and one-half days or one and one-quarter days or one day, the ratio would remain the same, eight to one.

The standard freight car of today cost $900 and the relative investment in freight cars in the illustration used, for the intrastate and interstate traffic, would be $7,200 for the intrastate cars and $900 for the interstate car.

This investment is a part of the cost of road and equipment and the larger investment places additional burden upon the railway company to earn the interest necessary to carry it, in the ratio of eight to one for intrastate over interstate traffic.

The cost of maintenance of cars is greater in the intrastate than in the interstate traffic.

As I have illustrated heretofore, eight cars must be provided to handle the same tonnage of intrastate traffic as can be handled with one car in interstate traffic.

This naturally increases the proportion of cost of freight car maintenance in intrastate traffic over interstate traffic.

Depreciation is also going on with eight cars as against one car equivalent in interstate traffic.

The maintenance of cars is a large item in the expense of operation, amounting to 12% of the entire freight cost in Arkansas during the six months July to December, 1907, inclusive.

1056 The depreciation would be eight times as great in the intrastate traffic as in the interstate traffic. And this depreciation on all cars for the purpose of complying with the requirements of classification prescribed by the Interstate Commerce Commission was established at 3% per annum or $27 per car per annum on the standard car of today.

The relative depreciation, therefore, would be $216 per annum for the eight cars in the intrastate traffic as against $27 per annum for the single car in the interstate traffic. The ratio would be eight to one.

The repairs to freight cars average $63.20 each in 1907, and this is fairly representative.

As the use of freight cars in intrastate traffic to reach the same ton mile equivalent is eight times that of interstate traffic, the maintenance would be at the ratio of $505.84 for eight cars per annum as against $63.23 for one car per annum for interstate traffic, in the ratio of eight to one.

From my practical experience in railway operation and for the reasons I have given, and for other reasons, in my opinion the cost of handling intrastate traffic is at least five times as great as that of handling interstate traffic, on the basis of quantity, or more than double the cost of the basis of revenue, as shown in these exhibits.

1057 Mr. MOORE: What would be the difference in the cost of conducting interstate and intrastate passenger traffic? But before I come to that, I want to ask you another question:

If the interstate and trans-state hauls were considered without regard to State lines what effect would it have upon the length of the haul, as to that character of traffic?

A. It would increase it very materially. It would increase it to the extent of the mileage made on the trans-state business in other states.

Q. The statement you have made in regard to extra cost of state business relates almost altogether to transporation of freight?

A. Yes, sir.

Q. I wish you would state now your views as to the extra cost, if there is extra cost (and I believe you have already stated there is) of conducting intrastate passenger traffic over interstate traffic of that character, and what elements you think enter into that additional cost?

A. The cost to the railway company of doing the intrastate passenger business is greater than that of doing the interstate passenger business. It is not relatively as great, however, in my opinion, in the passenger as it is in the freight traffic. Some of the elements are the same, the foremost of which is the length of haul. That is,

the average distance of the journey made by intrastate passengers and interstate passengers.

1058 Exhibit 5 shows that intrastate passengers made an average journey of 30 miles, while interstate passengers made an average of 118 miles; consequently four different persons making intrastate journeys would be required to equal the journey of one interstate passenger.

Every passenger is entitled, by usage and by law, to have in the state of Arkansas 150 pounds of baggage carried without extra charge; and the rate he pays for his own transportation covers the carriage of 150 pounds of his belongings, if he tenders them.

The railway company is responsible, as a common carrier, in Arkansas, for 48 hours, for all baggage amounting to 150 pounds and less, after it reaches its destination; instead of for twenty-four hours as is the case in other states. The railroad company cannot collect storage charges until the forty-eight hours have expired, and then only at the rate of 5¢ per day; while in other states the storage collection begins 24 hours after the arrival of the baggage; and is made at the rate of 25¢ per day.

The passenger may, in addition to the 150 pounds of baggage carried demand the carriage of any excess above that amount, at the rate of 12½% of a first class fare; or, in other words, the railway company is compelled by the laws of Arkansas, to carry such baggage as is tendered by the passenger, on its passenger trains under the same liabilities and conditions as other baggage, for which

1059 it would receive, on the two cents per mile basis, two and one-half mills per hundred pounds; and on the three cent basis, 3.7 mills per one hundred pounds, per mile.

Now, there are the terminal expenses as well in the passenger service as there are in the freight service. These terminal expenses consists of the sale of tickets, reports and other accountings, attending their sale. The checking, handling and reporting of baggage. The cost of heating, lighting, cleaning, repairing and policing stations, and many other station expenses, and the intrastate passenger imposes two terminal expenses upon the railway company; that is, one at the beginning of the journey and the other at the end.

The same is true of an interstate passenger; but one of the terminal expenses, either that at the beginning or at the end of the journey is incurred in another state and is a part of the expenses charged to the operation in that other state.

The railway company transports in Arkansas four different individuals making intrastate trips of 30 miles each, to one individual making an uninterrupted interstate journey of 118 miles. And the ratio is, therefore, eight terminal expenses for an intrastate passenger to one for the interstate passenger.

The interstate passenger purchases his ticket, has his bag-

1060 gage checked and loaded; seats himself in the train and rides 118 miles.

The intrastate passenger buys his ticket, has his baggage checked and loaded; boards the train and rides but 30 miles, when he alights and his baggage is put off the train with him.

Another passenger buys a ticket at that point, has his baggage checked and loaded and rides another thirty miles, where he leaves the train and his baggage is likewise put off.

Here again another passenger purchases a ticket and repeats the process in regard to the baggage, rides 30 miles further, where he leaves the train and his baggage is put off.

At that point a fourth passenger purchases a ticket and has his baggage checked and loaded and rides the remainder of the distance, where he leaves the train and his baggage is unloaded.

Here is the sale of four tickets to the intrastate passengers, who journey along with the interstate passenger whose trip involved but one.

The railway company has loaded four pieces of baggage for the intrastate passengers and unloaded four pieces, making eight handlings of the baggage. While the baggage of the Interstate passenger has been handled but once. In the accounting and auditing features of the expenses, there is the expense of
1061 checking four tickets or fares in the intrastate passenger service as against one in the interstate.

The ticket auditor of the Missouri Pacific System has about 130 clerks who are used for that purpose, and his pay-roll amounts to about $82,800 per annum.

The handling of baggage at most stations requires extra labor.

The number of interstate passengers transported during the six months covered by Exhibit 5 was 257,950, a large proportion of whom were trans-state passengers passing through the state of Arkansas to and from northern points, Texas, Louisiana and the Republic of Mexico, whose baggage required no handling whatever in that state.

1,444,540 intrastate passengers were transported during the same period. Or, about five to one.

The number of passengers of the two classes do not, of course, show the exact relation of the baggage expenses, but considering the activity of commercial travelers, with their heavy baggage, theatrical troupes, and other itinerants all of whom carry baggage to the full amount, or in excess of the minimum; and all of whom make short trips, drumming the cities and towns, it is a fair conclusion that the ratio of eight handlings of intrastate baggage to one handling of other baggage prevails.

With the intrastate passengers four persons board and four persons leave the trains, as compared with one person boarding or leaving the train in interstate travel.
1062 This makes eight exposures to accidents in the intrastate traffic against one in the interstate traffic; and the railway company annually settles claims to no inconsiderable amount for injuries to passengers in boarding and leaving trains.

The handling of baggage, the loading of four pieces and the unloading of an equal number makes eight handlings of baggae in intrastate to one in interstate traffic; and the exposure of this bagage to damage and loss, for which the railway company will be held, in the ratio of eight to one.

The through trains make fewer stops in a given distance than the local passenger trains.

On the main line between Texarkana and Moark the Missouri state line, a through or interstate passenger train averages one stop iin every thirty-five miles. While the local train averages a stop every five miles.

Local trains, therefore, stop seven times as often as through passenger trains on the heaviest carrying passenger line of the Company in Arkansas.

The starting and stopping of trains occasion the greatest wear and tear to equipment. And also a greater expenditure of energy than for the continued movement.

The running gear in the body of the cars is subject to greater strain in stopping and starting than in continued movement, and deterioration and more frequent repairs are necessary on this account.

1063 The greater expenditure of energy to start and stop a train, perhaps can be illustrated from the observation of anyone in watching a team of horses starting a loaded vagon. Every muscle will be strained in the effort to start the load, but after it is once under way the team will handle the load with ease and will even attain a considerable speed.

When it is necessary to stop the muscular action is reversed, and the horses put their weight and strength against the load and the momentum that the load has acquired. Both efforts are greater than are necessary in moving the wagon between the given points; and if the horses were confined to stopping and starting all the time, or making very short trips between those points, they naturally would wear out quicker than they would if the intervals were longer.

Take street cars that were formerly handled by horses. There was a strain and delay in starting and stopping the cars at each corner. We will presume that these street cars had two horse power. If that number were employed the electric lines when they took over those cars and reformed them into electric cars used two 7½ horse power motors. While these were found to give the necessary speed, they could attain the momentum between stops, the time lost in stopping and starting was considrable, so the power was increased to two fifteen horse power motors to each car.

The standard car of today, weighing say 50,000 pounds or 25 tons is equipped with four 40 horse power motors.

1064 The necessity for that is not for attaining speed between points but in starting and stopping cars quickly and getting quick acceleration.

As an illustration of that, if the cars in the City of St. Louis were moving at a speed of say fifteen miles an hour, but 30,000 horse power would be necessary to be maintained during the night at the power house, against 60,000 horse power which they do maintain, because of the necessity of the extra energy required in starting and stopping the cars.

On the other divisions of the road in Arkansas, all passenger trains practically make all local stops.

I make an exception of the Central Division between Little Rock and Van Buren, where those night trains make stops at little longer intervals, 17 miles an hour or approximately that. But the general average of the local trains is five miles between stops.

In my opinion, from a practical standpoint, the cost of handling intrastate passenger traffic exceeds that of handling interstate passenger traffic by 35%.

1065 C. J. McPHERSON.

Direct-examination.

By Mr. MOORE:

Q. What if anything has the Railway Company done to improve its efficiency of operation beginning with the year 1900?

A. The Railway Company has made extensive grade revisions and changes in its alignment; and purchased heavier equipment. That is, locomotives of greater tractive power and cars of larger capacity and made other improvements to increase the efficiency of its train service. The grade between Moark, near the State Line, between Missouri and Arkansas, a distance of 307 miles, is now six tenths of one per cent and this involved the reduction of the maximum grades between Moark and Little Rock, 35 feet to the mile, and between Little Rock and Texarkana, 26 feet to the mile, these reductions bringing the maximum grade to 31 feet to the mile of six tenths of one percent.

Between Knobel and Helena, a distance of 140 miles, the maximum grade was reduced from 91 feet to the mile, Southbound, to 62 feet to the mile. And Northbound to 83 feet, involving the cutting down of the maximum grade 28 feet to the mile Southbound and 8 feet Northbound.

Between East Little Rock and Pine Bluff, a distance of 42 miles,
the maximum grade has been reduced from 52 feet to the
1066 mile to 26 feet, which was a maximum grade reduction of
26 feet to the mile and leaves the present grade one half of one percent.

Between Little Rock and Van Buren a distance of 152 miles, the maximum grade prior to the revision was 85 feet to the mile East bound and 81 feet to the mile West bound.

These grades have both been reduced to 31 feet to the mile, or six tenths of one percent.

This involved a reduction of maximum grade 54 feet to the mile East bound and 50 feet to the mile West bound

This, with other work in the way of improvements, improving the efficiency of the property, caused an expenditure of $8,684,411.00 for the eight fiscal years, 1901 to 1908.

It does not embrace some of the expenses, however, as the figures chargeable in 1899 and the first half of 1900 were not accessible at the time that this compilation was prepared.

This reduction of grade increased the efficiency of the Railway in its tonnage road haul.

As a further improvement, the Company purchased during the period mentioned 323 locomotives of large tractive power and 6680 freight cars of large capacity at a cost of $9,660,372.00.

This heavier power likewise contributed to increasing the average tonange road haul and thus increased the efficiency of the service.

This increased efficiency of operation, however, has been
1067 overcome and far outrun by the forces working against it.

That is, the increased rate of wages and the increased cost of material, the burdens imposed by legislation and the increase in taxes.

Q. How were those expenditures to which you refer as improvements carried in the accounts of the Company, or do you know?

A. Those improvements were charged to betterments.

Q. They did not affect the operating accounts?

A. No they were not charged to the operating accounts.

Q. Mr. McPherson, from an operating standpoint what do you think of the year 1907 as a representative period for the purpose of testing and determining the reasonableness or unreasonableness of the rates that are in controversy in this case?

A. In my opinion the year 1907 was a fairly representative year.

Q. You have spoken in your previous examination of certain increases in the cost of labor and material in and during the year 1907; did those increases in any way affect that period as a representative period for the purpose of testing the rates referred to?

A. Not in the ratio of the increase they represent because they will continue in the future. They are permanent in their character and
would affect in the same way the operation of subsequent
1068 years.

Q. Did those increases change in any way the relation as between the rates or the earnings of the property during the year 1907 in your judgment?

A. I do not understand your question.

Q. Did the increase in the cost of labor and material which occurred in 1907 affect the relation as between the conduct or the cost of the interstate and intrastate traffic?

A. They are burdens on the whole traffic.

Q. Did they affect all of the traffic alike?

A. They would affect all of the traffic alike.

Q. When did the panic of 1907 first begin to be felt in the operating department of the Railroad?

A. The operating department felt it in December of 1907.

Q. When did it reach its height in its effect upon the operation of the Iron Mountain Railroad?

A. In the following summer I should say, from April to June it reached the high water mark of effect.

Q. How long did the conditions brought about by the panic continue?

A. Well they continued all through the fiscal year of 1909.

Q. You mean by that the fiscal year, 1908-1909?

A. The fiscal year ending June 30th, 1909.

1069 Q. Was that period, that is to say, the fiscal year of 1909, a representative period with regard to operations, business, and revenues of the Railroad?

A. I should not consider it a representative year,——

Q. Why not?

A. —until later. Possibly to make myself clear on that it would be necessary to take up the situation that followed the panic.

Q. Very well, do so.

A. And make an explanation of what the Railway Company did and what the effect of what they did at that time had upon the fiscal year ending June 30th, 1909.

After the recession of business began to be felt the Railroads were confronted with a very serious situation and one that required a good deal of thinking. In order that the expenses and the income might be brought somewhere into relation required that there must be an increase in the rates that the Railway received for handling its freight and passengers or there must be a decrease in the rate of wages paid to its employees.

The soundings in both directions showed that the first would be met with united opposition by the public, and the second would be resisted by the employees to the extremity of tying up business all over the country.

The only alternative was to reduce expenses wherever possible in force and in maintenanve.

The way that the Iron Mountain met this stiuation was by reducing the working hours in the locomotive and car shops and

1070 on the car repair track, followed by a further reduction of the number of men and a reduction in the working hours in the machinery department, and in some cases to twenty hours per week, and finally in the closing of the locomotive and car shops and discontinuing work on the heavy repair tracks (that is, where the larger car repairs were made altogether) deferring repairs to both cars and locomotives until the advent of better times when they would be needed.

In the maintenance of way department and in the engineering dept. a large reduction was made in both the outside and inside clerical forces and the regular maintenance work was deferred on roadway and structures so far as it could safely be done from that time forward.

All investigations, plans for improvements, and kindred work looking toward the future development was deferred and the force engaged in investigation were dropped.

The passenger trains were discontinued on the Iron Mountain where the same could be done without embarrassment to the public, and this amounted to 511,000 passenger train miles per annum.

Small local stations were closed and the number of telegraph operators was reduced by closing either night or day offices, without interfering with the handling of train miles to an unnecessary extent.

The clerical forces at all stations were cut down.

1071 The yard forces were reduced to the minimum and a reduction was made in the forces in the general offices equivalent to 30% of the pay rolls; deferring the collection and distribution of statistics and other accounting that could be deferred; increasing the amount of labor required from each individual and lengthening his hours of labor.

These methods so far of course as they pertained to maintenance of structures, road and equipment would under normal conditions be considered improvident, as the expense to regain normal conditions carries a heavy percentage of added cost as deferred work always does.

This, however, was the only alternative that would enable the Railway to survive.

The condition of the public mind was such that the rates of freight could not be advanced and the cost of living was so great that the organizations of labor in the railway service would have fought to the last extremity any decrease in the rate of wages.

This maintenance work to which I referred was deferred until perhaps the beginning of October——

Q. Yhat year?

A. —1908, when there was some revival of business making a demand for cars and locomotives, and the maintenance work was resumed to such an extent as the business justified.

With a gradual improvement in business conditions, this maintenance of work was undertaken on a heavy scale during the balance of the year; that is, beginning with November, and further
1072 increased in the early months of 1909, the present year. And the result reflected in the expenses of operation these deferred obligations of the previous year.

The normal probably was reached with the beginning of the current fiscal year, the month of July.

1073 Cross-examination of C. J. McPherson.

By Mr. Hill:

Q. Mr. McPherson, I believe that you stated that the use of the bridge at Van Buren for passenger trains facilitates the traffic on that line; and should benefit the interstate and intrastate traffic both: is that correct?

A. That is correct.

Q. Do you know how far it is from Van Buren to Fort Smith by way of Cherokee Junction?

A. About nine miles, I should say.

Q. It is five miles from Van Buren to Fort Smith over the bridge, isn't it?

A. I should say that was relatively the figure.

Q. You save four miles with two passenger trains, a day, do you not, by taking the bridge route?

A. Yes, sir.

Q. You pay $1,000 a month for that?

A. I have not got those figures. I cannot tell you what
1074 the payment made for that facility is.

Q. Mr. Johnson has already stated about that. Mr. Johnson will tell us.

Mr. JOHNSON: That is what the monthly rental is.

Q. The minimum?

Mr. JOHNSON: That is what we pay.

Q. Mr. McPherson, the travel to Fort Smith by way of Cherokee Junction is not so heavy that this route across the bridge is necessary, is it?

A. Whatever it may be and under whatever circumstances may exist, it relieves the rest of the traffic.

Q. Is it necessary for it to be relieved?

A. That would depend upon the condition of the traffic, yes.

Q. From your knowledge of the traffic, is it necessary to be relieved?

A. I should say it would be when traffic was heavy, under certain conditions.

Q. Take the traffic during the last half of 1907, the point of our inquiry; was it so heavy then that it was necessary to be relieved by diverting two trains a day over the Van Buren Bridge?

A. It facilitated the general operation of the road.

Q. That does not answer my question, Mr. McPherson.

A. Why, I think it does, Judge. My intention is to show that as a facility of operation it is calculated to afford dispatch
1075 under circumstances where the traffic was such that the trains would be otherwise delayed. And that is something that could occur in 1907, or any other year.

Q. How many trains make that trip from Van Buren to Fort Smith by way of Cherokee Junction, per day?

A. Trains No. 103 and No. 104, two passenger trains.

Q. How many freight?

A. Well, we do not schedule freight trains over that bridge, so far as I know. Whether it would be used temporarily under certain conditions, is a matter that might come up from day to day, but it is not a matter that would be brought to my attention.

Q. I am speaking of normal conditions: how many freight trains do you run over there a day?

A. Well, I do not know that we run any freight trains over the bridge.

Q. I am talking about Cherokee.

A. By way of Cherokee Junction?

Q. Yes. I believe your answer was what you ran over the bridge.

A. I understood you to ask about freight trains.

Q. I understood from Mr. Johnson that you did not run any freight trains over the bridge, except in emergencies; that you ran two passenger trains over that bridge: now I want to know how many trains you run from Van Buren to Fort Smith by way of Cherokee Junction?

1076 A. That would develop from day to day.

Q. Give us the normal operation.

A. Well, I would have to get those figures from the records. I could not give what would be the actual, normal operation.

Q. I would like to get just an approximation, if you know that; just about what it is.

A. I would be unable to say, because that would involve the

movement of switch engines, and there is no regular schedule of such trains and I would prefer to answer that a little later, and get some of those movements, say for a relatively average or normal day.

Q. During the period of inquiry, the last half of 1907?

A. Yes, sir.

Q. I believe you say the use of the Cotton Belt tracks from Paragould to the state line is necessary in order to relieve the traffic on the main line?

A. Yes, sir.

Q. I think you stated the local traffic on the main line between Bald Knob and state line was enormous: isn't it a fact that that track is used to relieve the interstate and trans-state traffic that comes up not from the main line but from the Helena Division.

A. No, sir. It is used to relieve all traffic. There is a contribution, of course, to the other traffic. The traffic from the
1077 Helena Division, as you will notice by looking at the time table, would come up to both Paragould and Knobel for movement.

Q. Would come up from where?

A. To Paragould and Knobel. Now the heavy main line traffic on the St. Louis Iron Mountain & Southern is between Bald Knob and Knobel.

Q. You mean local or interstate?

A. I mean all traffic. That is the heavy line of traffic, and that for which the necessity existed to afford facilities to move.

Q. Right north of the state line you have some pretty steep grades, haven't you?

A. Well, beginning at Piedmont there is the beginning of the heavy grades.

Q. And from there up to Bismarck or De Soto?

A. Yes, sir, from there well on to De Soto.

Q. The power of your locomotives is very much less there than it is from state line to Texarkana?

A. The power of the locomotives?

Q. The moving power?

A. Oh, yes.

Q. Very much less?

A. Yes, sir. That would be regulated by the grades.

Q. This line from Paragould of the Cotton Belt Railway that you use, goes up across the Mississippi River at Thebes and then
1078 connects with your Illinois Division, doesn't it?

A. Yes, sir.

Q. You have a low grade route that way?

A. Part of the traffic moves that way and part of it moves by way of Poplar Bluffs.

Q. I asked if you did not have a low grade route that way?

A. Yes, sir.

Q. Is not this route utilized in order to get the benefit of the low grade, to bring your freight up the river on the east side to the Illinois Division, and then into St. Louis that way, in order to avoid the heavy grades about Gads Hill and Tip Top?

A. That is the benefit of the movement we give to that traffic, and in doing so we relieve the main line just to the extent of the traffic that moves over that route. There is greater efficiency of the train service by going in that direction; we get the same efficiency of the train service that we get on the Arkansas line, as the grades would be relatively the same.

Q. That is largely the purpose of that movement, isn't it?

A. The purpose of the entire movement and arrangement is to relieve the line north of Little Rock.

Q. Owing to the physical difficulties about Gads Hill, and that section of the Missouri Division, isn't it?

1079 A. That is one of the reasons. I think I can explain that in this way: a train of freight moving over the line from Bald Knob to the state line can be moved over the territory you mention relatively with the same class of power, and the efficiency of that line is about equal to the efficiency of the locomotives on the line between Bald Knob and the state line, say Moark. However, the line from Bald Knob to the state line or from Little Rock practically to the state line would not be sufficient as a single line to handle the traffic, freight and passenger, expeditiously. The connection which we make with the Illinois Division, through the joint use of the Cotton Belt line, enables the traffic to be handled with success.

Q. If you had a choice of two routes, one a low grade and one a high grade, leading to a great market, as a practical operating man which would you use?

A. I would use the low grade line.

Q. That is exactly what you do here, with all the freight you get.

A. And in doing that we are getting relatively the same grade, and the same efficiency of power, that we do with the line from Bald Knob to the state line.

Q. You have your own ferry here in St. Louis? Ivory Ferry I believe it is called, connecting your Illinois Division with your terminals on the west side of the river, haven't you?

1080 A. Yes, sir.

Q. When you move your freight to St. Louis by this Illinois Division you can move it into the terminals in St. Louis on the west side?

A. Yes, sir, over that ferry.

Q. With your own ferry?

A. Yes, sir.

Q. You do move freight to the west side in that way, don't you?

A. Yes, sir, we move such traffic as is necessary to come to this side of the river in that way.

Q. There is no doubt that the primary consideration in that movement is to avoid the hills in the Missouri Division, isn't it, Mr. McPherson?

A. Judge, as a general proposition of operating efficiency, we must provide for the handling of traffic that is offered to the com-

pany. Now, the traffic was too great for this single line from Little Rock to Moark or to Piedmont, which is practically all the same grades. And the arrangement we made fortunately gave us connection with our Illinois Division, that we could use and still increase our efficiency of operation not only in Arkansas but in Missouri. And that is what was done. We did not confine the view, when this arrangement was made, to the exact effect in Arkansas,

1081 but we treated it as a general, broad proposition, to get the greatest efficiency and give the best service. That is the object of a railroad, to give good service.

Q. The local traffic from Bald Knob to state line is very small, isn't it?

A. Oh, no.

Q. Intrastate traffic?

A. Oh, no, there is a great deal of business there. We have very important cities. We have quite an important jobbing point there, New Port.

Q. About what proportion of the tonnage that passes over that line from Bald Knob to State line is intrastate.

A. I cannot say what proportion that represents of the tonnage. The statistics are not kept to cover such small districts.

Q. As an operating man you should have a pretty intelligent idea of what the proportion would be.

A. There is a great deal of local freight in there. It is quite a well settled territory, the towns are thriving, and in a general way they will average very fairly with the rest of the line north of Little Rock.

Q. It was not to relieve that traffic that this arrangement was made?

A. It was to relieve all of the traffic, Judge Hill. Whatever the delay might have been in a general way in operation would have been to all of the traffic.

Q. It was not to relieve this ten or fifteen per cent of

1082 traffic, that that arrangement was made with the Cotton Belt, road, was it?

A. As much, up to the percentage it represented of the whole.

Q. You think so?

A. Yes, sir, it was made to relieve the whole of the traffic and facilitate the movement of all the traffic.

We have had more trouble and more complaints in the delay to a box of goods, or a small package of freight, than we frequently do for a carload.

Q. Don't you bring a lot of trains from the Illinois Division, from Illinois down to Paragould and then up to Knobel and then on down the main line to Hoxie?

A. Oh, no. That is not the movement. The trains we would move down that way would come from Paragould, Wynne, Bald Knob and then down to Little Rock.

A. As a matter of fact, don't you have considerable movement as

I have indicated, the Illinois Division to Paragould, up to Knobel, then strike the main line and go south on it?

A. Oh, no, we would not do that, on account of the unfavorable grade.

Q. Don't you do that? I wish you would examine your wheel reports and give me an answer on that.

A. That would not be a natural movement. There might be a movement made that way in case of emergency or on account
1083 of particular conditions at a certain time; but it would not be a sensible movement to make if the rest of the line was open.

Q. I wish you would examine your wheel reports for some representative time during the period we have under inquiry and answer me further about that.

A. That would involve a great deal of work. I know as a physical proposition that is not a movement that under ordinary conditions the railroads would make and it would be made only provided there was some interference with the movement of the traffic in a straight forward way. I think I can illustrate that to you.

Q. I understand your reasoning now as against that movement. I am not asking whether it should or should not be made, but I am asking if it was made?

A. It would not be made under normal conditions.

Q. I believe you have put in some statistics for October, 1907, and I wish you would examine your wheel reports for that month, and then answer me about that movement.

A. That is a pretty large order, Judge, to examine the wheel reports for the month of October, 1907. It would probably require a number of clerks three or four months.

Q. Has not all that been worked up in your office?

A. Not in my office.

Q. In the office of the company?

A. It has not been worked up in any manner that would
1084 show any unusual movement.

Q. You have those wheel reports, haven't you?

A. We have the wheel reports.

Q. I wish you would look into that and by the time we meet again, give use your further report on that: I think you will find it not as difficult as you seem to think it is.

A. Well, do I understand that you desire me to examine these wheel reports for the month of October, 1907, to ascertain whether the traffic moved from Paragould up to Knobel?

Q. And the extent of the movement. Or for any other normal month. I just took October because I understood that was the one you were working up. (Your exhibit 26.)

A. The figures that have been made for that month would not cover information of that kind.

Q. They would not?

A. No, sir.

Q. But you can get it in your office?

A. I have explained about the amount of work that would be involved in doing it.

It is possible that some traffic moved that way, as I said before, under conditions of high water or a wreck or storms, or embargoes, or something of that sort. But it would not be a normal movement.

Q. There is very little intratsate movement from Paragould to Knobel, and then on up to the state line, isn't there?

1085 A. I should not think there was very much. There is some.

Q. This intrastate traffic there would not be seriously impeded by sending your trains from that Helena Division up that route, would it? I am referring to the intrastate traffic from Paragould up to Knobel and up to the state line?

A. Oh, no, I do not suppose you could single out the traffic. You would not deal with it as a single proposition but you would deal with all of the traffic. You could not segregate what would be delayed and what would not be delayed. It might all be moving in the same trains, and there would be less opportunity for delay under the present arrangement.

Q. You referred in your testimony to a number of laws that had been passed, which increased your operating expenses: the electric headlight law was one you dwelt upon considerably:

Isn't it a fact that none of the expenses incurred by reason of that law were incurred during the period of our inquiry? That is, the last half of 1907.

A. That is probably the case. That law was passed, or took effect, since that time. At least I think the headlights were not installed during those six months but after those six months.

Q. On your Fort Smith and Little Rock Divisions they have not been installed yet, have they?

A. Oh, yes.

Q. You have a lawsuit down there about them—or

1086 have you settled that?

A. Well, it was not possible to do all those things at once. We have been putting them on very rapidly. There is a good deal of work that attaches to it and a great deal of expense; and we arranged with the Commission to install so many headlights per month. They were satisfied if we would do that, until headlights had been put on all our locomotives.

Q. This Passenger Full Crew Law, was passed only in 1909?

A. Yes, sir.

Q. There was none of that expense which went into your statistics, when you got your injunction before Judge Van DeVanter?

A. No, sir, I do not think there was any of that expense.

Q. Wasn't that true, too, of the sheds over repair tracks?

A. That has been done since.

Q. That is also true of the Semi-monthly payday law?

A. That is also true of the Semi-monthly payday law.

Q. What about the full freight crew law?

A. We put on the third brakeman in May, 1907.

Q. Didn't you put on the extra brakeman before that law was passed?

A. No, sir.

1087 Aren't you mistaken about that Mr. McPherson?

A. No, sir. We had negotiations that same year with the labor organizations, during the preceding fall, who were trying to install the third brakeman on freight trains.

Q. It was testified in the contest you had with the Rock Island road, that you put the third brakeman on before the law was passed?

A. No, sir, we put them on to avoid the penalty of the law.

My impression is that the accrued penalties for failure to do so, in each case, would have amounted to something like $10,000,000 or $12,000,000, before the case could be decided. The penalties in that law were so severe.

Q. You do not think, then, that you put those on voluntarily prior to the passage of the act?

A. Oh, no, sir.

Q. Those people testified to that I know. But you ought to know accurately.

A. We made no addition to the number of brakemen employed on through trains.

Q. When was that law passed?

A. I think that law was approved March 28, 1907, and took effect in thirty days; that would make it April 28, 1907, and we put them on May 1, 1907.

Q. The expense incurred by that law is the only one of those laws you have referred to which had been incurred prior to your obtaining your injunction?

1088 A. I do not know whether that would be prior to our obtaining the injunction. That was obtained I believe in 1908.

Q. I have not stated my question correctly. I meant to say the period of time covered by you exhibits, on which you obtained your injunction, which I understand covered the last half of 1907.

A. The third brakeman expense would be the only one of those increases as to electric headlight, full crew bill, third brakeman law, semi-monthly pay day law, and the shed over repair tracks, and the monthly visitation law.

The third brakeman law was the only expense of those enumerated, that would come in the six months mentioned so far as force is concerned.

Q. So far as the expense is concerned?

A. The increase in wages I have testified to was in there.

Q. That is not caused by the operation of laws. I was speaking of just the laws.

A. I wanted to be clear, that the increase in wages pertained to that entire period.

Q. There are some laws of Congress that have affected materially your expenses, haven't they?

A. The classification of accounts to which I have referred in my testimony.

Q. How about the Safety Appliance Act?

A. Yes sir, the Safety Appliance Act was an act of Con-
1089 gress.

Q. That increased your expenses very materially didn't it?

A. The maintenance of Safety Appliances was a very heavy expense.

Q. Do you know about how much it is per annum?

A. I should say $250,000.00 on the System, the Missouri Pacific and Iron Mountain combined.

Q. About how much of that would be in Arkansas, just roughly speaking?

A. Well, that would be only a guess.

Q. I understand that. You could not make an accurate estimate off hand?

A. No sir.

Mr. MOORE:

Q. You mean the St. Louis, Iron Mountain & Southern or the Missouri Pacific?

A. I mean the Missouri Pacific System, about $250,000.00 per annum.

I would say in the vicinity of $60,000.00 a year.

Mr. HILL:

Q. There was a very heavy expense in equipping your trains with those devices, wasn't there?

A. Something over $4,700,000.

Q. Upon the whole system?

A. Yes sir.

Q. In round numbers five million dollars?

A. Nearly five million dollars.

Q. About what proportion of that would affect Arkansas?

1090 A. Well I could not tell that because of course that would be a betterment expense and a part of the capital account. That would not be charged to operation.

Q. That is true I expect.

That applied only to your interstate movement, that safety appliance device act?

A. Oh, no, that applies to everything. I do not know what the law is in the matter, but the attitude of the Commission is that any road that does an interstate business must have all of its cars equipped with these appliances.

Q. It is an expense attached to your interstate business?

A. I should not say so. It is an expense that attaches to all of the business.

Q. Congress did not attempt to legislate on the intrastate business in Arkansas, in that Safety Appliance law, did it?

A. In obedience to that law we have been obliged to take the rulings of the Interstate Commerce Commission, and that ruling is

that if a railroad is engaged in interstate commerce at all it must equip all of its equipment with these safety appliances, regardless of what particular business that equipment may be engaged in.

Q. That is right. And does not that answer my question that that is an expense which attaches to interstate commerce?

A. I do not think I would be qualified to answer that. It
1091 seems to me it would be more of a legal question than a practical operating one Judge.

Q. Well, we will leave it at that.

Haven't there been some other congressional legislation that has materially increased your operating expenses?

A. The hours of service law prohibits the railroad company from permitting their train employees to be on duty for a longer period than sixteen consecutive hours; and their operators and train dispatchers for a longer period than eight hours, or nine hours in the construction that we have given to the law; but that has created some additional expense?

Q. Have you any figures on how much?

A. I have not.

Q. It is a heavy item, isn't it?

A. I did make a memorandum here, that the telegraph operators and dispatchers, the extra expense since March 1908, when the law took effect, up to an- including October, was $22,027.00. That is about $1100.00 per month, in Arkansas.

As to the train service, it is pretty hard to figure out and I could not tell you just what that would amount to.

We have made some changes in operating arrangements to avoid as far as possible any expense incident to that law, by changing the runs in certain respects.

1092 Q. Is there any other congressional legislation which has materially increased your operating expenses?

A. I do not know of any, unless it might be the Employer's liability law.

Q. You have not hardly felt the force of that, I suppose, as yet.

A. No, I think perhaps there is practically the same legislation in the State lesislation of Arkansas.

Q. No.

A. Well, I do not know as to that. But I cannot say what effect that has.

Q. That is too recent. You could not forecast that.

Isn't it a fact, Mr. McPherson, that the legislation of congress has created heavy burdens upon your traffic, much heavier than the legislation of the State of Arkansas?

A. Oh, no. The Federal Safety Appliance Act was passed in 1893; that was sixteen years ago.

Q. It did not go into effect then, did it?

A. Yes sir, gradually. The Railroad Companies were given some extensions from time to time, but the application of the Safety appliances began at that time and continued until completed.

I think, as I recollect it now, some three years time was given.

Of course the Railroad Companies did receive efficiency in opera-

tion from the application of those safety appliances. It did
1093 add to the efficiency of the railroad service.

Now the laws to which I have referred in Arkansas have added nothing to the efficiency of the service.

Q. There is only one of those that is in our point of inquiry, the third brakeman act.

A. Our operating expenses today show very fully what the increases amount to.

Q. I am referring to the case as you made it before Judge Van Devanter. You have just testified that there was only one of those items of expense included in those statistics.

Now, keeping that in mind, is it a fact that the legislation congress had burdened your operation with expenses very much heavier than the State of Arkansas had?

A. I should say not. The expense occasioned by the federal legislation was in its major part the safety appliance act, that gives the railroad company added efficiency in its service.

The only cost of its maintenance in Arkansas might be somewhere in the same vicinity as the added cost on account of the third brakeman; but the third brakeman gave no added efficiency in operation.

Q. And the third brakeman law applies only to your interstate trains, over 24 cars I believe it is.

A. Well, it applies to all trains we handle even a work
1094 train.

Q. But in practical operation that would apply only to interstate trains, wouldn't it?

A. No sir, it would apply to all trains, as all trains possibly carry more or less both kinds of traffic.

Q. Your local trains that are engaged in purely intrastate business would not fall within the provisions of that law, would they?

A. They might.

Q. They might, but I am asking a practical question of whether they do or not.

A. So far as that is concerned, the local trains had a third brakeman before that law was passed. They had three brakemen always. I am not taking that into consideration in the analysis of this question.

Q. This really adds nothing to the situation, so far as the local trains are concerned, does it?

A. Not so far as the local trains are concerned, because they were provided with three brakemen before this law was passed.

Q. It is a burden which is put upon the interstate traffic?

A. It is placed upon every train in Arkansas that has over 24 cars.

Q. That would apply only to the interstate traffic.

A. Not necessarily.

Q. I am asking as to the practical effect. Of course there
1095 would be times when it would not; but I am asking about the practical operation of it.

A. In the practical operation, Judge, all freight trains are likely to have intrastate traffic. Arkansas is a large State and for long

movements intrastate carload freight is likely to be handled in through trains, over the long route.

Q. I believe you testified that the average haul was about fifty miles, wasn't it?

A. Seventy miles.

Q. The laws generally speaking then would apply to your through trains?

A. It would apply to through trains as distinguished from local trains, yes; still, local trains might have excess of 24 cars.

Q. But not very often, would they?

A. On level track and going into terminals, if there was traffic to move, they would probably be required to pick it up and take it into the end of their route.

Q. Of the three classes of traffic which you discussed yesterday—trans state, intrastate, interstate, from which do you receive the greatest revenue?

A. That would be an accounting proposition. That would be in the revenue account and I am not qualified to testify as to that.

Q. I will put it this way: which of those three classes of traffic is the most profitable?

A. That would involve the construing of which, after the
1096 expenses of conducting the traffic were deducted would yield the greatest net revenue?

Q. Yes.

A. That I would be unable to state.

Q. What is your opinion about it?

A. I do not believe I have ever given that matter consideration, Judge.

Q. You have given your reasons why it is more expensive to operate intrastate traffic: how could you give that without taking into consideration the question of profit from the two classes of traffic?

A. Well, to give an intelligent answer to that would involve a knowledge of the rates that each class of traffic bore; and that is something with which I am not acquainted.

Now as to which of the classes of traffic occasioned the greater expense to move, is something I could say, but I am not acquainted with the other factor.

Q. That is the other side of the question. Well, give your view about that.

A. As I have expressed it heretofore, the trans-state traffic is handled at lesser cost, because of the fact that it involves practically no stationary expenses.

Q. Do you consider that the least expenses of the three kinds of traffic.

A. To handle?

Q. Which would you consider the next?

A. The interstate traffic in which a portion of the station-
1097 ary expense only is handled in one State.

Now dealing with this question as applied to Arkansas, you mean?

Q. Yes.

A. In general?

Q. No I want to confine the inquiry to the conditions in Arkansas.

A. Manifestly the traffic that required only one half the stationary expense would be the next cheaper traffic to handle. That would be the interstate traffic.

And that which involved stationary expenses, or a double handling in the State would be the most expensive.

Q. Are those the reasons and the only reasons you have for so classifying the expenses?

A. No sir. I have given my reasons at a good deal of length in direct examination.

Q. As to intrastate, but I am now asking you as to a comparison of the three classes.

I understand the reason you gave as to burdening intrastate traffic with greater expense, but I am asking you now for a comparison of the three grades of traffic.

A. I should say that so far as expense in Arkansas is concerned, the relation would be something like this:

In the trans-state traffic there is no charge in the exhibits here for operation, for stationary service.

In the interstate traffic there would be one charge for stationary service.

In the intrastate traffic there would be two charges, in the
1098 exhibits filed here, showing the operating expenses of the road.

Q. Are these the only reasons you have for so grading these classes of traffic according to their expense?

A. Those are the principal reasons and the other reasons I have given would, of course, influence me in my answer to that question.

Q. What other reasons would influence you?

A. I believe I have spoken of the length of haul and of the elements that would enter into the variety of traffic.

Q. I don't quite follow you about the variety.

A. Well, the consideration of the character, value, risk, bulk, and so forth, of the freight or commodity.

Q. Does not that apply equally to all those classes of traffic except as to the length of the haul and the terminal expenses?

A. Yes sir.

Q. Your reasons reduce themselves to the terminal proposition and the length of the haul.

A. No sir, I cannot say that. I have analyzed my reasons thoroughly and if I should have to repeat them now it would mean repeating my analysis.

Q. I do not recall any other elements right now that you had in your evidence than those which I have mentioned. I do not care to have you repeat your evidence, but just call your attention to any other factors.

1099 A. Well, there are many more reasons that I have than those which I have given, that influence my opinion, influence this classification. I would not like to limit my reasons to the answer yes or no, that your question would require.

Q. I would like you to give the other factors that influence you in this opinion. So far as I can recall your testimony this is all. I may be in error about that.

Q. So far as the classification of the traffic is concerned those are the principal reasons, the fundamental reasons.

Q. You still say the "Principal" reasons, Mr. McPherson: now I would like to have any other factors you have.

A. That would require me to take up the three propositions given in my testimony, as to extra cost.

Q. Just mention those, without repeating your reasons for them.

A. I gave my reasons, that the intrastate traffic made a greater use of the railway facilities in proportion to the tonnage, and that a greater proportionate cost of maintenance was required than for interstate traffic.

That the railway company secured less efficiency from its cars in intrastate freight traffic in proportion to the relative tonnage than in interstate traffic.

That it required a greater investment in cars, and a larger
1100 cost for their maintenance, to conduct intrastate traffic than interstate.

Q. I understood you to make that distinction between intrastate and trans-state traffic.

A. I made it, or intended to make it if I did not do so, as between intrastate traffic and all other traffic.

Q. Did you not state that the interstate and intrastate traffic made use of all of the facilities of the railroad?

A. Yes, sir.

Q. And that the trans-state traffic did not?

A. The trans-state traffic does not.

Q. Then that reasoning would not apply, would it, Mr. McPherson?

A. Yes, it would. Do you mean in the classification?

Q. Yes.

A. Yes, it would apply, because the intrastate traffic makes use of them eight times while the interstate traffic makes use of them but once.

Q. That comes back to the proposition of the length of haul and use of terminals does it not?

A. Yes, sir.

Q. Aside from the use of terminals and length of haul, is there any greater cost for the intrastate than for the interstate traffic, for maintenance—disregarding the trans-state?

1101 Mr. MOORE: Do you mean the entire maintenance?

Mr. HILL: I was just taking what he said. I suppose he meant maintenance of way.

The WITNESS:

A. Yes, there would be a greater expense for maintenance of way that would follow the length of haul and the relative use of switches, sidetracks——

Q. That still comes back to the terminal and length of haul, does it not, Mr. McPherson?

A. Yes, if you want to divide it this way, but——

Q. Then you say——

A. I beg your pardon. I have not quite answered that question.

Q. All right. I did not mean to interrupt you.

A. In the average length of haul, 224 miles interstate and 70 miles intrastate, there is a greater use of sidetracks and all of the facilities at stations, and that would be relatively, as eight to one, in the maintenance of all of the facilities used. Not only the tracks, but buildings and whatever other structures were required in the intrastate and interstate operation.

Q. You say there would be greater efficiency of car service in interstate than in intrastate, and less cost for maintenance of equipment. That comes back to the same proposition of the length of haul and the use of terminals, does it not?

1102 A. I presume it would, fundamentally.

Q. Your reasoning, then, in its final analysis places the difference in these classes of traffic, intrastate, interstate and transstate, upon the difference in the length of haul and the use of the facilities—terminal facilities, I mean?

A. And the consequences.

Q. Well, that would be included in it, I take it.

There are no other factors now that have influenced your judgment in this matter?

A. Yes, there are many other factors that have influenced my judgment.

Q. I would like to have them.

A. I don't know that I can reduce them to figures. They are matters of observation.

Q. Is there any further answer you would like to give, Mr. McPherson, to that?

A. There are other matters that apply to the consideration of these questions, that might exist one month and might not another month. There is the handling of empty cars. The traffic—state traffic, is not well balanced and requires more empty cars to be handled to provide for its loading than is the case with interstate traffic.

Q. Anything else?

A. As I said before, this would be one of the additional reasons that I would have in mind. There are others, but they don't occur to me just now.

1103 Q. The fundamental and principal one are the terminals and length of haul?

A. The added equipment and the maintenance; the various results that are dependant on those factors and results that work out——

Q. Now, on the question of the two terminals: you have stated that the Memphis terminals should properly be charged to Arkansas, and I understand from the exhibits in this case that the operation is charged to that. Is not that a fact?

A. That is the case.

Q. And all interstate shipments from Memphis points——

A. Let me qualify that.

Q. All right.

A. The terminals are regarded in this case the same as though they were located——

Q. I understand that. You explained that.

Then all the shipments from Memphis to Arkansas points, and from points east of Memphis to Arkansas, passing through Memphis terminals, would be interstate shipments and chargeable to terminals, would they not?

A. That would be the effect of the charge as it is made in the exhibit.

Q. Fort Smith is an interstate point, is it not?

A. I don't know what its legal status is.

Q. You haul all your freight by Cherokee Junction and that is in Oklahoma——

A. Will you let me finish my answer to the Memphis ques-
1104 tion?

Q. Yes, sir; I thought you were through.

A. As to Memphis, there are substantially no earnings on that business in Tennessee that the Iron Mountain receives, and so far as the accident of location is concerned, it would be the same to the Railway Company whether delivery was made to it on the east side or the west side of the River.

Q. All your freight traffic at Fort Smith, in and out, except from Fort Smith to Greenwood, goes into Oklahoma. That would make all of your traffic in and out of Fort Smith interstate?

A. Technically.

Q. That is the way your accounts are divided.

A. I don't know how the revenue accounts are divided. That is something with which I am unacquainted.

Q. It is in your statement, this Exhibit number 26 that you filed.

A. I did not file Exhibit number 26; that was filed by the accountant.

Q. I wish you would ask Mr. Johnson or Mr. Roth, whichever one prepared it.

A. Mr. Roth.

Mr. ROTH: In the exhibit it is treated as interstate business.

Mr. HILL:

Q. All shipments in and out of Fort Smith, except the small traffic handled down to Greenwood, would have two terminal
1105 expenses in Arkansas, would it not?

A. I should object to saying "except the small traffic down to Greenwood;" except the traffic.

Q. You know that it is very small, don't you?

A. I would not say that; it was small comparatively, whatever traffic there is.

Q. Well, it would be only the traffic between Fort Smith and Greenwood, including the "Jenny Lind" mine?

A. That may mean considerable traffic.

Q. That would be only to Fort Smith. As soon as it went out of Fort Smith it would be interstate. Isn't that true?

A. That is the way I understand it. Technically, it would be. I don't understand what the law is, any more than the fact that if the traffic originates in one state and passes through another to get back into the state of its origin, it has been held to be interstate traffic.

Q. Your accounts are made that way.

A. Those complications of operation are very difficult for the operating man to separate in his mind. The state line as a distinction is an imaginary one.

Q. You handle a great deal of traffic in Arkansas from Memphis and from Fort Smith, do you not?

A. Oh yes, there is considerable traffic.

Q. Those two points are both large distributing centers, are they not?

A. Well, Memphis is a large distributing center. Fort Smith is somewhat smaller.

1106 Q. A good deal smaller than Memphis, but still it is a large distributing center as far as Arkansas is concerned?

A. It is an important city.

Q. I suppose it is the largest distributing center in Arkansas, outside of Memphis.

A. I would not like to measure it with Little Rock.

Q. They are the two largest distributing points on your line, are they not?

A. Located in Arkansas.

Q. Now, every bit of that traffic, interstate traffic, in and out of Memphis and in and out of Fort Smith, between Greenwood and Fort Smith, would have two terminal expenses in Arkansas?

A. Yes.

Q. What is the situation in Texarkana in regard to interstate traffic? Where are your yards there?

A. Our yards are all in Arkansas.

Q. They connect with the T. P. yards, do they not?

A. Yes.

Q. Don't they extend into Texas?

A. The Texas & Pacific yards are in Texas. We have no mileage in Texas.

Q. You don't own the title, I understand, in Texas, but there is no break in the yards themselves. They are continuous are they not, on both sides of the state line?

A. Well, there are several yards there. In their operation
1107 they are practically continuous yards. But the Iron Mountain has no property of any sort in Texas.

Q. I understand the title to the Iron Mountain property is confined to that in Arkansas?

A. Yes.

Q. But the yard which you use extends right on across the state line into Texas?

A. For operating purposes it is more available to use a yard of that character.

Q. You have an agent there in charge of those yards between the T. P. and Iron Mountain, have you not?

A. Yes.

Q. It is operated as one yard, is it not?

A. Well, the agent is the agent of the Iron Mountain and for the Texas & Pacific both, but of course, he owes the Iron Mountain no allegiance for his——

Q. I am not speaking of that. You get cars there in your yards that come out of Texas, all the time?

A. Oh yes, that is the only way we can get them.

Q. All your interstate business coming from Texas to any point in Arkansas, would be handled twice in Arkansas, would it not?

A. Be handled twice?

Q. Yes.

A. In Arkansas?

Q. Yes, in your Texarkana yard, or Little Rock, or whatever yard?

1108 A. So far as the switching is concerned, *of* yes, the physical handling of the cars moving, classification into trains.

Q. That would be handled twice in Arkansas?

A. It might be handled three times.

Q. I expect if it went very far it would be.

A. So far as the switching is concerned—that is, merely its movement, its classification expense. I did not embrace that in my opinion. I excluded that.

Q. I am not referring to that. I understand the difference you make, but I am trying to get at your freight that goes in there in your yard in Texas, and is handled in Arkansas——

A. The switching is done—the classification, but not any local switching or any station expense; merely the classification of the cars as made in the classification yards in all traffic.

Q. Of these three classes of traffic, you say the trans-state is the least expensive, for the reasons you have given. Of what does the trans-state traffic principally consist?

A. It consist- of all varieties of commodities that are interchanged between states. It would consist of merchandise, machinery and other manufactured articles, southbound, and northbound, of lumber, sugar, and of the products of the states in which the traffic originated. It would be a general traffic.

Q. What is the largest trans-state item, the largest single

1109 one?

A. The largest single items of trans-state traffic are grain and lumber.

Q. Only?

A. No; I think those are the two larger items.

Q. What was that—lumber and what else?

A. Grain and lumber.

Q. How about livestock and coal?

A. There is not very much livestock. We have not encouraged the livestock business. In fact, we withdrew all of our solicitation from

Texas. I think now we may have one or two men down there, sent down there within the last six months.

Q. You have considerable coal movement from Illinois?

A. Yes, considerable coal movement from Illinois.

Q. That is trans-state?

A. The destination of that is largely in Arkansas.

Q. It not a great deal of it in Louisiana and Texas?

A. No, not a very heavy movement. I should not regard it as heavy, comparatively speaking.

Q. Have you not a pretty heavy trans-state movement of vegetables, onions and citrous fruits?

A. Oh yes, such things as that, northbound.

Q. A pretty heavy movement northbound?

A. I should say that they formed a portion of the traffic, but not a principal part of the traffic.

Q. Is not your livestock movement, northbound, pretty
1110 heavy?

A. No, we do a small livestock business.

Q. But you do twelve or fifteen thousand cars——

A. What?

Q. About how much?

A. The fact is, we don't take any livestock from Texas if we can avoid it, Judge.

Q. I am not speaking of that. I am trying to get at the volume. Whether willing or unwilling about how much do you get?

A. I can't say. We occasionally have been the only line open, in cases of wash-outs, storms, etc., that have taken away the bridges, etc., on the Red River, and I think in one month—perhaps that might have been in 1907—that all the roads in Texas brought all their livestock to us to bring north. That was for a week or ten days, something of that sort.

As I said before, we have withdrawn our solicitation, practically, of livestock from Texas.

Q. What about your solicitation of fruits and vegetables; don't you handle a great deal of those?

A. We handle a good many onions on the Iron Mountain, that are raised down in the southern part of Texas on the International & Great Northern.

Q. How about potatoes in Texas? Is there not a pretty heavy movement of them?

1111 A. Yes.

Q. How about citrous fruits from California?

A. Well, we are not a principal line because we are not the short line. They naturally would not take the longer line. They form a part of our entire business.

Q. Don't you handle a great many spring vegetables out of Texas?

A. Yes, it would amount to considerable, but it is a small part of our general traffic. The articles I have referred to, lumber and grain, form the heavier part of the traffic.

Q. These various items you have just been mentioning—lumber, grain, livestock, fruit of all kinds, and vegetables; with the exception

of grain and lumber they are commodities that require fast movement, are they not?

A. Well, I don't know that onions do, but we give them efficient movement over the road. Yes—I should say that we give them preferred movement.

Q. Do they use your facilities to the utmost?

A. Oh no, there would be no terminal expense on any of that traffic in Arkansas.

Q. On none of it?

A. Not any.

Q. Would there be on your livestock?

A. No, not unless the stock was fed, watered and unloaded in transit.

Q. That would likely occur, would it not?

1112 A. It might possibly occur, yes.

Q. What is it, twenty-eight hours or twenty-four, that you have to——

A. The new law permits the livestock to be held in cars for thirty-six hours, on request of the party in charge, and very much of that stock moves on that thirty-six hour privilege.

Our feeding yards have been at Poplar Bluff and on that thirty-six hour privilege we were able to make the run.

Q. Well, that new law was not in effect in 1907, of which we are inquiring in this case, was it?

A. I don't know about that.

Q. Did you not feed in your Texarkana yards there any livestock?

A. That is a feeding-yard. Wherever the run could not be made to the next feeding-yard, they would be fed at Texarkana.

Q. That would require considerable terminal expense, would it not?

A. Not such a terminal expense, Judge, as you are referring to.

The feed is paid for by the party who owns the stock, or it is a charge against the party who owns the stock, and follows it to its destination. The care of the stock in the meantime is looked after by the parties who have charge of the yards.

There would be a switching movement of the cars to the stock pens; the unloading of the stock into the yards, and there
1113 would be the re-loading of the stock into the cars after they were fed; but there would be no billing of the stock and no accounting features, or anything of that sort.

The many steps that would be involved in what we regard as a terminal expense would not be attached to that particular traffic.

Q. Is not that livestock traffic very expensive?

A. Very expensive?

Q. Yes.

A. It is a kind of traffic that we don't encourage.

Q. Is it not the most expensive traffic you handle?

A. No, not the most expensive. It is not as expensive as merchandise. It has——

Q. You mean by merchandise, less than carload merchandise?

A. Wait a moment. I did not answer your question.

I do not mean to say that it is the most expensive, but I mean that it requires the greater care.

Mr. MOORE:

Q. You are speaking now of livestock?

A. Livestock. Merchandise is the most expensive traffic that we handle, whether it is carload or less-than-carload.

Q. Do you think a carload of merchandise is more expensive than livestock?

A. I should regard it so, for the reasons that I explained in my direct testimony. The exposures of merchandise to loss, and the——

Q. Is not that greater in livestock than it is in merchan-
1114 dise?

A. The exposure of merchandise to loss and the fact that its loading and unloading must be accomplished by the employees of the Railway Company, and being a character of traffic that is made up of such a multitude of packages that must all be accounted for separately and handled separately; we would have in a carload of merchandise as many perhaps as fifteen hundred to two thousand packages, while in a car of livestock we might have only twenty animals.

Q. Well, that is referring to the less than carload proposition:

A. No, merchandise in carloads would be the same. It would involve the same accounting for each individual package; the treating of each individual package as an entity, just the same.

Q. Are there not more claims against livestock than in any other class of traffic?

A. No, our principal claims are for merchandise.

Q. Don't your livestock require the loading to be lighter, and you get less efficiency out of your locomotives than any other class of traffic?

A. That is the train loading of livestock?

Q. Yes, train loading and carloading, both.

A. No, in the carload we do not exceed an average of five tons of merchandise for less than carload freight to the car.

There is a minimum on stock fixed by the tariff. I think
1115 it is 24,000 pounds, 22,000 or 24,000 pounds.

Q. You keep comparing this with the less than carload. There is a very small movement, only about four per cent in that state. I don't mean to make comparison with that. I mean with other carloads.

A. It has a minimum carload, provided for by the tariff, and there are something like six hundred, I think, other commodities that have a similar minimum.

Q. Don't you get less efficiency out of your locomotives on livestock than on other classes of traffic?

A. As to the locomotives, it is our general rule in the event that we have livestock, to load the locomotive to eighty-five per cent of its potentiality. That is a reduction of fifteen per cent.

Q. How about your intrastate trains: do you have any such reduction as that?

A. Well, we have no trains that handle only intrastate traffic. You refer to local trains?

Q. Yes.

A. They handle both classes of traffic.

Q. What efficiency do you get out of your locomotives on your local trains?

A. We get a larger efficiency in Arkansas than in some other States, because of the fact that the natural resources of lumber still continue, and in pretty near every part of the state.

I have not given that very much thought.

1116 Q. You don't get as much efficiency from locomotives in livestock traffic as you do in other ordinarily heavily loaded freight trains, do you?

A. The same rule would apply where we had perishable freight.

Q. I was just going to come to that.

A. Where we have, for instance, trains containing fruit, vegetables, and such kindred articles; where we make an effort to effect delivery within a certain time from the point of origin to destination.

Q. You have to run those trains faster and lose efficiency in your locomotive power, don't you?

A. We don't get the 100 per cent of efficiency out of locomotives that carry that class of traffic.

Q. That class of traffic is largely trans-state?

A. Oh no, we have a great deal of fruit and vegetables in Arkansas. Arkansas is a very important state.

Q. But your trans-state traffic is largely that which you have enumerated?

A. Oh no, I would not say so.

Q. Would you not say so?

A. No sir. I said that it formed a part of our trans-state traffic, but it also forms a part of our intrastate traffic.

Q. Getting back to your livestock: what capacity of your cars do you get in loading livestock?

1117 A. The minimum fixed by the tariff, I think, is 24,000 pounds, Judge.

Q. Do you get over sixty-five per cent of their capacity?

A. In our general average loading of all cars we reach about eighteen tons. I think it was seventeen and a fraction tons in 1907. That is a general average of the tons to the loaded car mile. That is, the general average tons per loaded car mile.

That takes in the merchandise that loads up to five tons and it would take in the several hundred articles of that minimum that are handled in carloads. We would get presumably the minimum of livestock, which would be about twelve tons.

Q. What about the movement of your freight cars in the livestock traffic: how much of that is empty?

A. I would have to refer to the papers in my office to give that, and then it would be on the System, as a System proposition, the Missouri Pacific and Iron Mountain combined. I have no separate figures for Arkansas, but in a general way I have the System figures and I can give you them tomorrow.

Q. There is a very large percentage of cattle cars returned empty, is there not?

A. Oh yes; those and coal cars, and other cars of special character like tanks.

Q. Don't you think, considering all of these matters, that your cattle traffic—trans-state—from Texas through Arkansas, is more expense than other dead weight traffic?

1118 A. Than other what?

Q. Dead weight traffic.

A. I should say yes, that it would be more expensive, and for that reason I am very glad to say that there is very little of it.

Q. Is it not twice as expensive?

A. I should say that it is twice as expensive as some other classes of freight.

Q. Is it not twice as expensive as the general run of freight?

A. No, I don't think it would be any more expensive than the general handling of perishable freight.

It would not be as expensive as merchandise and aside from feeding in transit and the fact that it keeps the organization on the ragged edge all the time; that has, in the operating man's mind, as much to do with his opinion on that traffic as the expense.

Q. You testified in the Cattle Raisers' case, did you not?

A. Yes.

Q. I have before me a copy of that and I want to read you this:

"A. It seems to me that considering the fact that you must have established facilities, immovable facilities at stations, special cars, lesser efficiency of cars in that traffic, lesser efficiency of your locomotives and the fact that you must return these cars empty approximately the same distance that you hauled them loaded;

1119 and the further fact that the maintenance of these cars is of a greater ratio than the ordinary traffic car; and the fact that these cars are of necessity idle certain times of the year tying up capital, in my opinion the cost approximates very closely twice as much in the cattle traffic as in the ordinary dead freight traffic."

Q. Is that correct?

A. Yes. I will explain that to you. I am willing to affirm all that I said there.

That largely applied to stock movements from Colorado and the southwest, as well as the south.

There are such things as striking an average with our traffic, between Kansas City and Pueblo, a distance of, I believe 612 miles. We have nothing for which those cars can be utilized; while I believe I did state in that testimony further on that we did use the cattle cars or stock cars for some coal loading to the south and for loading melons in southeastern Missouri.

So far as the average traffic is concerned, I was then taking, of course, the great number of the heavier and coarser commodities, and striking an average as on that basis.

The larger and heavier commodities form the greater part of the tonnage.

Between Kansas City and Pueblo, that long distance, the haul of

stock cars must be empty and they must be handled in a ratio because the shipments are made very frequently in a hurry to
1120 get the stock out of the ranges before the storms come on.

Treating the matter generally in that testimony, I did not apply it particularly to Arkansas, or to the southeast and south, where we do have a little better chance to equalize our tonnage.

Mr. MOORE: What line of the Missouri Pacific System participated in that traffic that you were testifying about in the Cattle Raisers' case?

A. That was the Missouri Pacific——

Q. The Iron Mountain was not a party?

A. I don't recall——

Q. Did it participate in traffic west of Kansas City?

A. Oh no, it is purely a Missouri Pacific proposition.

Q. Your testimony was with reference to that line out there?

A. Largely. That was the principal line of our livestock movement. The movement of livestock on the Iron Mountain was a very small fraction of our general livestock business.

Mr. HILL: I will call your attention to this, which I find in your testimony:

1121 "In describing the movement of that train of stock, illustrating the movement of a train of live stock from Texarkana to St. Louis, I believe I left off before I had quite finished, and if I may be allowed to conclude that——

Q. Certainly.

A. This train movement from Texarkana to the National Stock Yards has been given preference over all other freight trains, both in the same direction and in an opposite direction. And our experience is that that results in delays to other trains.

That means that these trains that are waiting on the side track for the stock trains are consuming coal and very frequently the employees are earning overtime.

Q. Has the character of traffic in love stock cars any effect on the life of the car, or duration of the car, or any part of it?

A. Yes, sir, the maintenance of stock cars is based, or is at a higher cost than that of any other freight cars. And this is due partially to the way it is necessary to construct the car, and partly to its use.

The deck of the car is constantly wet from the time it is used once until another time and that not only rots the deck of the car but also rots the timbers. Also rots the tendons which fasten the superstructure to the deck.

You take an open car, a coal car or a flat car, and that car will dry out because the sun can strike it, and a box car is not sub-
1122 jected to the same moisture from its use as a stock car.

So that we find that while the stock cars are constructed probably as well as they can be, as well as we know, by modern methods, at the same time they are harder to keep up and the repair account is greater, and that very heavy repairs become necessary at shorter intervals than with other classes of equipment.

Q. How does the loading of your cattle shipments compare with the loading of other freight?

A. You mean as per car?

Q. Yes, per car, in tonnage, in comparison with the weight.

A. The general average for the fiscal year ending June 1907 on the Missouri Pacific-Iron Mountain System was 17.6 tons per loaded car mile.

In 1908 that was a ton less, which was 16.6 tons per loaded car mile.

The minimum on cattle is 22,000 pounds to the car, or 11 tons.

We have substantially no cars in that traffic shorter than 36 feet, and we find in our general experience that the minimum is about realized in general operation.

So in the theory of the car we reach only about 65% of our general average of the theory of our cars in loading.

1123 Q. Does the average loading of the cars which you have given, of all classes, include all kinds of freight?

A. All kinds of freight and it also includes this stock, in getting at this general average. It includes stock and coal and every other kind of commodity.

Q. It includes less than car load shipments?

A. It includes everything.

Q. In other words, a car that has any freight in it is classed as a loaded car in those statistics; is that the rule on your road?

A. Yes, sir. We have no other way of reaching it. The wheel reports show "loaded" or "empty." It may be a pound or 100 pounds, or it may be 40 tons, as we have a load. The general average I have expressed here in tons.

Now right here, that should be carried a little further to show the situation:

Our average weight for a 36 foot stock car is 16 tons. It may vary a few hundred pounds. We have them running from 32,700 pounds down to perhaps 32,300 pounds. In order to secure 11 tons of live stock as paying freight, we are obliged to haul that car in both directions, in one direction loaded where the tare weight is 16 tons, and in the other direction empty, with the tare weight the same, making 32 tons of tare weight that is hauled to produce 11 tons of paying freight.

1124 Q. Considering the facts you have related and your experience in transportation matters, in your opinion how does the cost of transportation to a Railroad Company, in the reception and delivery of cattle, compare with the general average of other freight?

A. It is very much higher. I must take in an element on which I based that opinion, which I have not referred to thus far, and that is the matter of claims.

Q. Have you any statistics on the claim question?

A. I have not any statistics on claims but it is a matter which comes under my daily observation, and live stock is subject to claims for damages where had the freight been of any other character no claims would have been made; that is, a claim for delay and for shrinkage and for extra feed charges, if they have to hold over for another day's market, and a difference possibly in the sell-

ing price between the market of the day the live stock was due to arrive and the day on which it was actually sold; that is, a claim that would not arise on any other class of traffic, a claim for delay; and it is not necessary that that delay should be very much in order to have a claim presented.

We can delay passengers; we can bring passenger train into its destination 10 or 15 hours late, for some reason, and we are not obliged to pay those passengers for the delay.

But should live stock reach the market sometimes only
1125 three hours late or two and a half hours late, a claim would be filed against the Company, which it would be obliged to pay.

So that of all the business that the Railway Company does the most delicate in the way of claims is its live stock traffic.

Taking the cost and maintenance of special facilities at stations which are necessary, and of the intermediate facilities at feeding yards, the cost of bedding the cars, of loading and unloading the stock both at its final terminal and in transit at feeding points, the disinfecting and cleaning of the cars; the claims that arise, not only from delay but from transporting drovers, and the cost of transporting the drovers; the less efficiency that the Railway Company gets from the use of these cars as compared with the average efficiency of all cars; the less efficiency that it gets from its engines; the greater cost of operation arising from running at a higher rate of speed; the delay to other trains in order to give the live stock preference, are all elements that are directly connected with the transportation of live stock; and are, to the extent of these points I have enumerated a greater cost in the handling of that traffic than all the other traffic."

1126 Q. That is your testimony, is it not?

A. I testified in that case. I presume it is.

Q. You recognize it, don't you?

A. I recognize some parts of it there. I don't recognize all about the freight traffic, because I believe you will find there—at least in some other part of that testimony—that I applied the general elements that I referred to there to all perishable freight, and, as I said before, so far as the cattle traffic from Texas is concerned, it is a very small part of our freight business.

Q. Is not your cattle business more than all the less than carload business in Arkansas?

A. Why, I don't know the relation of it. It would not be in cars. I don't know whether it would be in ton miles or in tons.

Q. I am referring to your intrastate less than carload.

A. Intrastate?

Q. Yes.

A. Oh, I don't know what that is——

Mr. MOORE: Are you referring to the entire trans-state, or——

Mr. HILL: The trans-state cattle business that we are talking about, and asking him to compare it with the intrastate less than carload.

A. How does the trans-state cattle business compare with the less than carload business in volume?

1127 Q. Yes, intrastate less than carload business.

A. And the trans-state cattle?

Q. Yes.

A. Did you ask me a question after you read that testimony?

Q. Just this question about the intrastate——

Mr. MOORE: He asked you if that was your testimony.

A. We were dealing in that case, in the testimony which you have mentioned, with trans-state traffic, and my comparison was made with that traffic, generally speaking, the trans-state traffic.

I don't recall that any question in that case arose about any local livestock, or any local traffic of any other character.

We were dealing with a question that concerned the states of Texas, Colorado and Oklahoma, and feeders coming to us through Oklahoma into Kansas.

That testimony would pertain entirely to trans-state livestock, and it related particularly to livestock from Colorado and livestock from Texas. More directly, however, to the former. It dealt with the traffic entirely comparative with it.

In the trans-state traffic from Texas or to Texas, of a general character, none of those feeding or stopping elements would apply except as to livestock and perishable freight, and the same would be true as between Colorado and Kansas City.

1128 In that testimony I was dealing with a trans-state proposition both east and west, north and south, and making a comparison with the same objective points and not with traffic that would originate in Arkansas—livestock, I mean, that would originate in Arkansas for the National Yards, or that would originate and terminate in Arkansas.

That testimony I am willing to affirm and say that as to all of the trans-state traffic handled the cost is more than double the other trans-state traffic.

Mr. HILL:

Q. You limit that to the trans-state traffic?

A. I could not consider local traffic in a question of that kind, comparatively.

Q. You did not so state it in this testimony, did you, Mr. McPherson?

A. The range of inquiry gave me no opportunity to do that.

Q. In this case you were questioned about the state freights, less than carloads and carload freights, were you not?

A. There was some reference to it in a desultory way. I do not believe it was carried to any considerable extent. I don't recall what it was now. It is nearly a year ago.

Q. On that volume of traffic I want to call your attention to this statement in your testimony here:

1129 "Q. Do you know the volume of the tonnage you receive of cattle at Texarkana going to St. Louis? I suppose you get very few livestock or any other kind to amount to any-

thing, perhaps a few sheep that would come from Texas. And do you know the amount you take out through the northern gateway, Coffeyville? Those would, of course, come from Oklahoma. Do you have records that show the amount of that traffic?

A. I have a memorandum here (indicating). During the fiscal year June 30, 1908, we handled 1234 cars of Texas cattle in St. Louis.

Q. Have you it for the Coffeyville Line?

A. No sir, I haven't it for the Coffeyville line. I got these figures for another purpose and I had them at the time this matter came up.

Q. Do you know the volume of your traffic out of Colorado to Kansas City?

A. Of stock traffic?

Q. Yes.

A. I have two months' movement—that is, this pencil memorandum does not show the time or the date or the point of origin. It is merely the Colorado Division and embraces local and through stock. It shows that in the month of May, 1908, we moved 177 cars of live stock, while in the month of September, 1908, we moved 1049 cars."

Q. That would indicate you do a heavier volume from Texarkana over the Iron Mountain than to Colorado?

1130 A. If you will go through that testimony you will find that that 1200 cars of cattle or livestock we handled because of the fact that the other railroads were tied up, and they brought it to us, dumped it on to us in one month, I think.

Q. You did not say that in this testimony.

A. Yes, it is in there and you will find where I referred to the suits that grew out of the handling of that 1200 cars of stock.

Q. Did you connect it with this month?

A. I could not connect it with anything else because almost that entire traffic, the whole of that traffic, was delivered to us during that period.

Q. You don't think this was normal traffic, then, over the Texarkana Line?

A. No, that was not a normal traffic. It was not a traffic we would have had had the other lines been able to handle it.

Q. I would like you to get us the data of your livestock traffic from Texarkana north, during the six months ending December 31, 1907.

A. Wait a moment. I would like to explain that a little further. You will remember that in the spring of 1908 the Red River was very high and the M. K. & T., the Gulf, Colorado & Santa Fe, the Frisco and the T. P., were unable to get that stock north over their own line. It was hauled over Northern Texas, from one junction point to another, one gateway to another, and, in connection

1131 with the Cotton Belt, we handled it in a detour from Texarkana to Hope and from Hope to St. Louis, over our own line.

I don't know the exact number of cars, but as it occurs to me now it was 1150, and as it occurs to me now, they were all given to us

within ten consecutive days, and that formed the bulk of that transstate traffic during that fiscal year.

Q. Which fiscal year was that?

A. The year ending June 30, 1908.

1132 Re-cross examination of Mr. F. P. JOHNSON, recalled:

By Mr. HILL:

Q. Mr. McPherson has put in evidence statistics of the increased cost of labor and material on the Missouri Pacific system for the past few years. I do not remember just how far back he goes.

How far back do you *do*, Mr. McPherson, in your statistics on labor and material?

A. Part of it was for 1897 and part for 1898 and part for 1900.

Q. I believe you covered a ten year period.

A. Yes sir a ten year period. The extremes, 1897 and 1907.

Q. I do not want to go back that far.

I want this, Mr. Johnson: I want your statistics of the dividends that the St. Louis, Iron Mountain & Southern Railway Company has paid in the last few years.

A. For how many years?

Q. I do not want to put you to the labor of going back as far as Mr. McPherson went on this other matter, but I would like to have you go back far enough to be thoroughly representative. I

1133 suppose three or four years would be sufficient.

A. That is, just the amount of dividends?

Q. Yes. And I wish you would show (we are not able to get it—at least, I am not, from the annual reports) just what that is on; whether on the lines in this suit, or whether it covers the subsidiary lines that are not in this suit.

A. The St. Louis, Iron Mountain & Southern Railway Company's dividends would not cover any subsidiary lines.

Q. It would cover just what is in this suit?

A. Yes sir.

Q. That is what I want.

A. Some of these subsidiary lines were not in existence then.

Q. Of course that would carry with it the capitalization, the amount of dividends paid, and the rate of the dividends. Give us full statistics on that subject.

A. Very well.

Q. I will ask you to file that as an exhibit to your testimony, when it is prepared.

A. Very well.

Q. Go as far back as is convenient. I will not ask you to go back so far to be laborious, but please go back for three or four years or something like that.

A. Very well.

1134 Cross-examination of C. J. McPHERSON continued, as follows:

By Mr. HILL:

Q. The questions I asked you yesterday about the diversion of traffic from the leased line of the Cotton Belt on to the main line of the St. Louis, Iron Mountain & Southern were asked under a misapprehension of the points of diversion.

I predicated the question as if the traffic were diverted to Paragould. I find that is a mistake. I believe it was diverted to Dexter, Missouri, and carried from there to Poplar Bluff on the main line and from there down to Hoxie. And, going back the other way, it would be diverted at Poplar Bluff from the main line, then up to Dexter and then up on the leased line on the east side.

The matters as I now state them are the facts, aren't they?

A. Yesterday, I answered that question with great positiveness that such movement as that would not be made, and my reason for it was that there is a prohibitive grade northbound from Paragould to Knobel, which would not enable a locomotive to handle half its potential tonnage in that direction.

I started our force to work last night to examine the wheel reports, in order to get the information for you. Since Mr. Hamilton has stated to me, as I came into the courtroom this morning, that
1135 that would not be required, I sent word over to the office to discontinue the work.

Q. The point I was getting at is this, Mr. McPherson: There is a diversion of your traffic on the main line of the St. Louis, Iron Mountain & Southern Railway to the leased line of the Cotton Belt Railway: that diversion takes place at Poplar Bluff, and Dexter, instead of at Paragould and Knobel: isn't that a fact?

A. Part of the traffic goes that way and part goes by way of Paragould.

In 1907 there was more of that handled in that way, because we had not completed at that time our terminal facilities at Paragould, to enable us to handle the traffic that way.

We had not got our engine house completed and our yards were only partially constructed in those six months of 1907.

For that reason, at that time there was less of that traffic that went by way of Paragould than now.

Q. There was then a heavier diversion over your leased line than there is now?

A. No, sir. There was a heavier diversion by way of Poplar Bluff and Dexter than now.

Q. That is what I intended to ask.

A. Yes, sir, but not as a whole.

Q. That diversion, Poplar Bluff to Dexter, is primarily
1136 in order to avoid the grades just north of Poplar Bluff, isn't it?

A. That diversion, Judge, as I am glad you give me an opportunity to explain, is to give us in effect a double track from Bald Knob to St. Louis.

We want to get a double track clear through, and the effect of it

is that we do get a lower grade from Piedmont north, by leasing the track of the Cotton Belt than we would if we paralleled our main line from the Missouri state line north or from Bald Knob north.

It would be impossible to handle the traffic on a single line road today between Bald Knob and the Arkansas state line, or, in fact, from the Arkansas state line to St. Louis. The traffic is beyond the capacity of a single track.

Q. Mr. McPherson, have you found out the number of trains that you carry from Fort Smith to Van Buren by way of Cherokee Junction?

A. In order to get the exact reflection of that I have wired our Superintendent to make up several days at this period (which is a normal period) and let me know not only the scheduled train movement but the extra train movement and the switching train movement; and I will furnish that information as soon as I hear from him.

Mr. MOORE:

Q. Will you get that some time today?

A. Yes, sir, I expect to hear very shortly.

Mr. HILL:

Q. What was the other question I asked you yesterday?

1137 A. The other question you asked me, I believe was the number of carloads of stock from Texarkana north.

For the fiscal year ending June 30, 1907, there was in the vicinity of 300 cars from Texas.

In the fiscal year ending June 30, 1908, there was 1234 cars.

As I explained, those cars was the result of the washout of the bridges across the Red River, of the other lines; and that stock was practically delivered to us in ten consecutive days.

For the six months from July to December, 1907, I will be able to give that information sometime this afternoon. I am having it worked up now.

Q. In the year ending June ..., 1908, 1234 cars: they must all have been in the month of June?

A. They were, substantially, I think. I do not recall the exact date but that was at a time——

Q. My recollection is you testified before or in the month of June. But I may be in error. I will look that up.

A. I think you will find, Judge, that that was for the year.

Q. Perhaps so. That may be true.

A. You will find that on Page 3667 of the record in the Cattle Raisers Case. What I referred to by months was the live stock from Pueblo.

Q. I see that was "during the fiscal year ending June 30,

1138 1908, we handled 1234 cars of Texas cattle into St. Louis." That meant cattle from Texarkana?

A. Yes, sir, cattle from Texarkana, and that was on account of high water.

Q. On the next page you give us your figures from Kansas by months?

A. Yes. That shows the fact, as I explained yesterday, that our live stock traffic, for which we were most concerned, was the Colorado traffic, for the reason that is explained there, in the month of September, 1908, we moved 1049 cars in one month; and the illustration I used of the movement of stock from Texarkana to St. Louis was because of the fact that there is a greater loss on the east side—a greater terminal cost than there is on stock coming in from the west side.

And, in order to make both illustrations, it was necessary—or the lawyers believed, at least, that it was necessary to show that fact, that the terminal charge was greater on stock coming up the east side of the river than on the west side.

Q. Now, Mr. McPherson, in your exhibit No. 1 to your testimony in that Texas Cattle Raisers Case I see you gave the movement of stock trains from Texarkana to St. Louis, showing the time and the tonnage of the stock trains, and also the tonnage of trains of dead freight moved on the same date, March 1st to April 30th,
1139 1909; that showed 239 box cars in that period: do you recall that?

A. I would have to have that to refer to in order to explain it. It is a little complicated and I had to explain that in that testimony. If you will indulge me while I look it over—I have not seen it in nearly a year now (Mr. McPherson here examines copy of testimony referred to).

I think there is another exhibit that will have to be read in connection with this.

There were two exhibits on this and one was filed later on.

Yes, this (indicating paper) was an exhibit that was filed by me in that case.

Q. It shows in the period of sixty days a movement of 239 stock cars from Texarkana north?

A. Yes sir. This is from March 1, to April 30, 1909.

Q. Was that a representative period of your stock movement?

A. Well, for the year 1909, for the same months, I should say it would be.

However, as I explained on the stand yesterday, over the protest of the operating department our traffic people put some stock solicitors in Texas, at the beginning of 1909, I believe. I am not quite sure whether it was January or February. Up to that time we had not solicited stock from Texas for quite a number of years, and these two months are the only months I have examined under the new
1140 conditions. So it would be difficult for me to reply to that.

Q. I believe you stated yesterday *that* your testimony that it costs twice as much to move live stock as any other freight was intended to refer to other than trans-state freight.

A. No, sir, not necessarily that. I did not mean to convey exactly that meaning.

I meant this: that it was a comparison of the traffic to and from the same territory; and it was so understood, I think, by all concerned in that hearing.

Q. Have you read over your testimony since yesterday?
A. Not at any considerable length. I have not had time.
Q. Have you a copy of it there?
A. Yes, sir.
Q. I wish wou would turn to Page 3702. I wish you would begin at the bottom of that page and read the next two or three pages into the record. There is a question by Mr. Terry there:
A. "Question by Mr. Terry: Your testimony indicated that in preparing the cost of the cattle traffic it was fair to charge to that traffic the special facilities provided for its exclusive use, such as stock pens, etc.: Why do you think that is a fair proposition in view of the fact that you have to furnish facilities for handling freight generally?
A. Well, the stock traffic is but a small per cent of the aggregate traffic of the railway; and that small per cent requires special
1141 facilities. Whereas, the other facilities furnished by the railroad, for the handling of straight business are adequate for not only the freight business it has but they would be sufficient for an equal"——
There is a little difference there between the stenographer's record and the record as I corrected it. I will read them both—
"For an equal amount of tonnage."
As I have corrected it, it should read "for an additional amount of tonnage."
Q. When was that correction made in the original testimony?
A. That correction was made by me. I remember the circumstances very well and it was made as soon as this copy of the record was sent to me by Judge Terry. Then I wrote Judge Terry calling his attention to that fact.
Q. You do not know whether the original record was corrected or not?
A. No, sir, I do not know whether the original record was corrected or not but I believe it was because I made a special point of it.

(Witness continues to read as follows:)

"Or, at least, if any additional facilities were required on that account it would be comparatively small. It would be a very small expense to extend the facilities to take care of the general traffic of the road."

Q. There is some discussion there which you might omit.
1142 A. In order to make this clear it would perhaps be necessary to say that that was based on an assumption of a certain tonnage of traffic, that the facilities already provided by the railway would be able to handle, if it were anything but live stock.
Q. Now, turn to the top of page 3705, please.
A. May I answer a question now that you asked me yesterday, answer it definitely?
Q. Yes.
A. You asked me as to the proportion of live stock, generally.
Now, on the entire system (I cannot give it to you for the

St. Louis, Iron Mountain & Southern) for the six months July 1, 1907 to Dec. 31, 1907, it was 2.24% of the ton miles.

The bulk of that live stock traffic is handled between Pueblo and Kansas City, with the local traffic handled from Kansas and Missouri, northern Arkansas and such local movements as are made within those states themselves.

Q. You mean that is the percentage of the entire Missouri Pacific System?

A. Yes, sir, the entire system.

Q. You have not the percentage of the St. Louis, Iron Mountain & Southern?

A. No, sir, I have not that. That would require a division of our statistics that is not made.

1143 Mr. MOORE:

Q. Do you say the bulk of that was on the Missouri Pacific Railway?

A. Yes, sir.

Q. You mean as distinguished from the St. Louis Iron Mountain & Southern?

A. Yes, sir, as distinguished from the St. Louis Iron Mountain & Southern.

Mr. HILL:

Q. Now, come back to that page 3705, Mr. McPherson, please, and read that first question there.

A. Judge, where these are referred to, may I continue to read the entire explanation?

Q. Yes, I would be glad to have you do it. I did not want to burden you any more than is necessary but would like to put in evidence those pages 3706, 3707 and 3708.

Mr. MOORE: If there is any explanation you think should be gotten in, in order to explain your testimony, Judge Hill has no objection to your getting it in.

Mr. HILL: None at all.

A. There is some testimony in this connection that belongs properly with this (indicating) and that is I stated the fact that this trans-state merchandise loaded heavier per car than the local or state merchandise.

Q. That is a fact. You stated it. I do not recall the page of the record but I know you made that statement.

A. I think this (indicating record) would hardly be complete unless that were a part of the record.

Q. Very well. You can just take that as a fact, or you can look up the page and have that copied, whichever suits you. I re-

1144 member very well your testimony was to that effect.

A. I do not like to cut up my copy here. It is the only one I have. I got this at some trouble last night.

Q. Give it to Miss Eagan and have her copy it into the record. Probably it would be better to give her your copy so you may be sure it is an exact copy.

A. I cannot find it just now. I presume I can locate it later on.

That that trans-state merchandise was loaded much heavier than other merchandise.

That is due to the fact that there is only so many cars a week and the cars are held and loaded up with all the freight they will hold.

Q. That is referring to the less than carload?

A. That is referring to merchandise.

Q. Wasn't it less than carload merchandise?

A. It would be both.

What I mean by less than carload merchandise is, anything the classes—anything that takes the class rates.

Q. Then, Mr. McPherson, with that explanation I will ask you to put into the record pages 3705, 3706, 3707 and 3708 down to the last question at the bottom of that page.

These pages read as follows:

1145 Q. Which class of merchandise cars are loaded the heaviest; the interstate cars moving from St. Louis to Texas or the short distance movements?

A. They load heavier per train mile; that is to say, more tons per mile are secured from those long hauls than from the short hauls.

Q. You mean you do not think there is any actual difference in the loading of the cars themselves?

A. Just as between the loading one car of commodity for a local point, and one for Texas. On commodities that would not essentially vary.

On less than car load freight it would run higher on the long haul than it would on the short haul. You would secure more tons per mile out of the transaction because of the fact that if the car was loaded at St. Louis for Texas with seven tons of freight we would have that seven tons of freight for 497 miles.

Q. I understand that.

A. If the car was a local car in the State, where the unloading is done at various points as the car progresses, while it starts out with seven tons it might wind up with 100 pounds; it would diminish as it progressed.

So the tons per loaded car mile would be greater for the through shipment than for the State shipment.

Q. You expressed an opinion that taking the local Missouri shipments and comparing them with the car load movements,

1146 the cost per ton mile of the less than car load local Missouri shipments was about two or three or four times as much—I do not remember what figure you used.

A. Between 4 and 8 somewhere.

Q. One of the principal differences was the clerical work incident to the less than car load shipments. You have to have a way bill and billing, etc.

A. Yes, sir. You may have 25 way bills accompanying one car of less than car load freight while only one way bill would be necessary with a car of commodity freight. And there would be the weighing, the loading and checking and auditing of all that business, all of which would be almost as great an expense for each package as for a car load.

Q. So the clerical work on the less than car load shipment per ton is much greater than on the car load shipment?

A. Yes sir and there is another element in there that increases the cost of the State traffic and that is the fact that the local trains are run very light. In a part of the country where the natural resources have been exhaused the local trains, or the way freight trains, probably do not reach 50% of the potentiality of the engine.

Q. In addition to the question of clerical expense, which is manifest, what are the other principal items that lead you to the conclusion that handling less than car load shipments locally in Missouri is so much greater per ton or per ton mile than the expense of handling car load freight? You have mentioned one, the light
1147 loading of the train; that is, the light loading of the car is one of the factors.

A. The lighter loading of the car and the fact that the proportion of tare to traffic falls necessarily. The expenditure of energy must be as great in the haul of a pound of car as a pound of freight. These local freights have a small quantity of freight in the car but it is necessary to haul that car just the same, and that does not vary. You must expend the energy to haul that car regardless of what it contains.

Another thing is the fact that the controlling necessity for moving the train in the local freight service is an established schedule. It must run every day, while the through freight you can run when you have a train load?

Q. Don't all those reasons, except the clerical expense apply to carrying cattle as compared with other car load freight?

A. That would be only relieved or modified by your ability to supply dead freight to fill out the train.

Q. Still after you supply the dead freight you have to get your engine down to about 80% of its rating to make that time required by the cattle.

A. Yes sir.

Q. So the train loading in the case of cattle is light and the car loading is light?

A. The car loading is about 65% based on our average
1148 traffic tons per loaded car mile. The engine efficiency runs from eighty to eighty five percent.

Q. Having reached the conclusion that the cost per ton mile of this less than car load traffic is four times as much per ton mile as car load traffic, could you venture an opinion as to how much more the cattle traffic is per ton mile than other car load freight, considering the items you have mentioned and all others that enter into the proposition?

A. It seems to me that considering the fact that you must have established facilities, immovable facilities at stations, special cars, a lesser efficiency of your cars in that traffic, lesser efficiency of your locomotives, and the fact that you must return those cars empty approximately the same distance that you haul them loaded; and the further fact that the maintenance of these cars is of a greater ratio than the ordinary traffic car; and the further fact that these cars are

opinion the cost approximates very closely twice as much in the
of necessity idle certain times of the year, tying up capital, in my
cattle traffic as in the ordinary average dead freight traffic.

1149 Q. Now, McPherson, after calling your attention to this testimony, isn't it a fact that you made the statement in that hearing that it cost twice as much to handle the cattle traffic as it did the average dead weight traffic, and that you were referring to all classes of freight traffic?

A. You could not put that construction on that, Judge Hill. This is a traffic that was segregated, which is well known to be of a special character and needs special attention and comparing it with the average tonnage of another traffic of the same character—carload traffic.

Q. Does not this testimony show that you were comparing it with the intrastate traffic of Missouri?

A. No, sir, that never was my intention.

Q. And that you were comparing it with other interstate and intrastate traffic?

A. You mean less than carload traffic?

Q. I mean both classes.

A. No, sir, that would not be the intention. I do not think that would be a fair conclusion for me to give.

Q. What do you mean in this final conclusion there at page 3708 where you say:

"In my opinion the cost approximates very closely twice as much in the cattle traffic as in the ordinary, average, dead freight traffic?"

A. That, of course, would mean the same comparison of carload traffic. Necessarily and naturally I would not put less than carload traffic against carload traffic, for comparative purposes, and

1150 that was not understood for the prevailing view of that testimony at the time.

Q. Then your opinion that you expressed here means that it would cost twice as much as the ordinary dead freight carload traffic?

A. Yes, sir, that is what it would be. That would be the only possible comparison.

Q. By "the average dead freight carload traffic" you mean both interstate and intrastate?

A. Well, in comparison with the length of the haul, yes.

Q. What was the object of that inquiry, where you gave this testimony?

A. Of the less than carload?

Q. No, the object of this Cattle Raisers Case: what kind of a suit was it?

A. I do not know what you would call the suit. It was a suit brought by the Railway Companies, as I understand it, to enjoin the cattle rates named by the Interstate Commerce Commission. It was either that or—wait a moment, let me think. (Witness pauses.)

I think it took two or three phases. I don't think I could take the litigation from its beginning up to this particular stage. It was to secure——

Q. I don't care for the details. It was to secure higher rates for the cattle, wasn't it?

A. It was to prevent a reduction of the rates on cattle.

1151 Q. Your effort was to prevent a reduction from the then existing rates?

A. Yes, sir. We did not want the business at the rates before the new rates were made and we did not solicit it.

Then they made new rates which were lower, and we went out of the traffic altogether.

Q. Mr. McPherson, after going through your testimony here and the reasons you gave for it, don't you have to make an exception to your testimony given yesterday, where you said the trans-state traffic was the least expensive of all the traffic; you will except the trans-state cattle from that, will you not?

A. My testimony as I have given it will apply generally. The cattle traffic is so small that it is negligible with us.

Q. But, still, you have to except that from your general statement that the trans-state traffic is the least expensive traffic, will you not?

A. You might take out that commodity, yes. It was so insignificant that I did not take it into account.

Q. What about the trans-state fruit, and vegetable movement?

A. Well, the trans-state fruit and vegetable movement, as I have said before, is very small.

Q. You will have to take that out, will you not?

A. No, sir.

1152 Q. Didn't you testify regarding that, that it required much quicker movement and less potentiality of the engines and the other trains had to get out of the way of it?

A. That would be true also of the intrastate and interstate vegetable and fruit traffic as well as of the trans-state.

Q. That would put the intra-state fruit and vegetable traffic on a par with the trans-state?

A. I would. It would take the classes along relatively together in the various classes of traffic.

Q. Then you ought to class that by variety of commodities, rather than whether it is trans-state or intrastate, ought you not?

A. No, sir. I think the relation would continue generally between the various commodities and the various classes of the traffic.

Q. How about your trans-state movement of citrous fruits from California?

A. Well, Judge, for the six months from July to December, 1907, that amounted to only .18% of our traffic; and most of that traffic was handled between Kansas City and St. Louis. We got it from the regular roads engaged in that business.

Q. No matter what the amount of it, it is a more expensive traffic to handle, isn't it?

A. No, sir, I should not say the citrous fruit traffic was especially expensive. It would go through in our fast trains, our scheduled fast trains.

Q. You made the point in this Texas Cattle Raisers' Case
1153 that those fast trains were the expensive trains, did you not?

A. I testified in that case that trains containing cattle (I do not recall whether I embraced fruit or not) were usually run at 85% of the potential tonnage of the engine.

Now, if there were any trains northbound from Texarkana containing live stock or perishable freight, and it was of enough consequence to put it on the high speed basis, it would take probably 15% less than the drag or potential capacity of the locomotive.

Q. I have a note here of your testimony there, that you put fruit and vegetables from Texas, and citrous fruits from California, on the same class moving faster with less potentiality of the engine, and the other traffic had to get out of the way.

A. Yes, sir, we would do the same thing with fruit and vegetables from Arkansas. We would give them the same relative movement.

Q. And you would put them on the same extensive basis that you would put those from Texas and California?

A. Yes, sir. In other words, we work with the shipper. We try to get into market with his goods in first class condition, and we lose of course, in our operation, any viewpoint of whether the traffic is of any one of those three primary classes. We look at its individual character.

Q. I believe that one of the heavy expenses of the freight traffic is the hauling of empty cars, isn't it?

1154 A. Yes, sir, the hauling of empty cars requires the same expenditure of energy as loaded cars, so far as it reaches the tonnage equivalent.

Q. Does not the interstate traffic call for the hauling of more empty cars than the intrastate traffic?

A. No, sir, the intrastate traffic is a distributive traffic. It does not go to large markets. It is distributed from the producing points in the state to the local stations. And it is very rare that there is any return traffic from those stations back of the point of production.

Q. Do you think, relatively there is more empty car movement in intrastate than in interstate traffic?

A. Yes, sir, I have so stated. I know it to be a fact.

Q. What is the percentage of empty car movement in live stock?

A. Well, our percent of empty stock car movement to the 100% of stock car movement is about 47%.

Q. That would be about 3% only return loaded?

A. Yes, sir, that is about it.

Q. That is, so far as the St. Louis, Iron Mountain & Southern in Arkansas is concerned; it is purely a trans-state movement, isn't it?

A. That would hardly apply to the Iron Mountain to any extent, for the reason that we do not send our stock cars to Texas for live stock whenever we can avoid it. And when we do, we are
1155 peculiarly fortunate in the situation as relates to the St. Louis, Iron Mountain & Southern in putting those stock cars into the Illinois coal field and loading them up with our company's coal at the Illinois mines.

Now, it is true, to a very large extent of that mileage, as between Kansas City and Pueblo. That is where our stock traffic is.

Q. What is the percentage of empty car movement of coal cars?

A. I believe I testified to that in this Cattle Raisers Case.

Q. 35%, I believe you testified, Mr. McPherson, is my memory of it?

A. Yes, sir, 35% coal cars.

Q. That would mean 15% only return loaded?

A. That is all.

Q. You have a large interstate movement of coal from Illinois to Arkansas and into Louisiana and Texas, haven't you?

A. No, sir, not very much from Illinois to Louisiana or Texas. They cannot compete with the other markets. We cannot compete with Alabama or Oklahoma.

Q. You have a large movement from Illinois into Arkansas?

A. We have a large movement from Illinois into Arkansas and where we can induce the lumber man in Arkansas to load coal cars with lumber we get a return load.

Of course, when the supply of cars is short we are quite successful.

1156 Q. What is the percentage of empty car movement of lumber cars—cars used in the lumber traffic?

A. We have no special cars used in the lumber traffic. We use all kinds of cars.

Q. Lumber uses all kinds of cars?

A. Yes, sir.

Q. That would be very much slower. Cars loaded with lumber, you would get a return on that very much more readily than any kind of traffic?

Mr. MOORE: You mean return load?

Mr. HILL: Yes.

A. Return load of lumber?

Q. Return load of anything.

A. We use all kinds of cars for lumber: flat cars, coal cars, stock cars, and box cars. We put them all into the lumber district and endeavor to avoid as much as possible the handling of empty cars.

Q. How about the handling tank cars?

A. Tank cars are practically a 50 and 50% proposition.

Q. You do not get any return movement of those. That is all interstate movement, too, isn't it?

A. I do not know about that. I suppose there are some movements made within the state.

Q. Not in tank cars. I do not suppose there is. There is no oil produced in Arkansas.

1157 A. As a present condition I would say there is very little. There must be some. We find exceptions to every rule on a railroad.

Q. As a general proposition that movement is interstate and the cars all return empty?

A. Yes, sir, that is the general condition.

Q. What about refrigerator cars? What is the percentage of empty movement on those?

A. I do not know that I could say. We had to be somewhat arbitrary at times and put those into traffic service, too.

Q. I think you gave 40% on that in the Texas Cattle Raisers Case: isn't that correct?

A. Probably that would be the average on the system. It would be somewhat less, probably, in Arkansas, because when cars are scarce we use those cars for some varieties of other forest products, such as shingles and things like that.

Mr. MOORE:

Q. You mean in Arkansas?

A. Yes, sir, in Arkansas. We have had some troubles in that respect with the refrigerator car owners, who made a good deal of complaint about our taking their cars for that purpose.

However, the refrigerator car mileage and the tank car mileage is quite small. It occupied but a small part of our general mileage.

We use refrigerator cars for the shipment of Arkansas
1158 fruit, from your country, Judge Hill, from Van Buren.

Q. It is interstate when you ship it out of Van Buren, isn't it?

A. Part of it. We ship some of it to Little Rock.

Q. Very little isn't it?

A. Whatever the shipments are. I could not follow them in detail.

Q. You know that the fruit movement is practically all interstate, don't you, Mr. McPherson?

A. I would not like to say it is practically all interstate but I should say that the greater part of it is interstate.

Q. Would not you say that 99.9% of it was interstate?

A. It is about as negligible a quantity as our citrous fruit and our stock.

Q. I expect you will find it a little more negligible.

Don't you have to do more billing on your tank cars than on any other kind of car? Don't you have to keep a regular accounting system of them?

A. I don't know that we do. We keep an account of the movement of every car.

Q. How do you return the empty tank cars?

A. I don't know just what the understanding is about that, but it is on the basis that we return as many empty miles as we are given loaded miles, I believe.

Q. You have to keep a record of that, don't you?

1159 A. Oh, yes, but we do that with all our cars.

Q. You have to make a regular way-bill for the car?

A. I do not know about that. It is not a waybill with charges. There may be a memorandum bill for its movement. It does not require the consulting of tariffs and such things as that.

Q. What is the percentage of empty car movement of cars engaged in hauling merchandise?

A. I don't know that I could give you that separately. We have about a 17% empty movement of cars other than those special cars that I have been enumerating.

I wanted to mention about that empty coal car movement. I think you asked me a question before I was quite through.

Q. All right.

A. In the intrastate coal movement, which is largely produced in Arkansas, that is for local consumption, there is absolutely no return loading for those coal cars. They go to little towns and they have to come right back to the mines, empty; and so far as that is concerned we are substantially in a 50% empty mileage situation.

Q. Don't you ship Arkansas coal down to Louisiana to the lumber fields there?

A. Some of it goes down there.

Q. Don't they load up those cars with lumber when they get them?

A. If there is a return load in the direction of the mines, they would do that, provided they could get it. But we find
1160 that the Arkansas people are not willing—dealers are not willing to load the coal cars with lumber.

Now this is lumber that is shipped to local Arkansas points and is dressed on at least one side, and it has been through the drier for sometime; and they are not willing to have it in anything but a closed car.

Q. Don't they take mine props back in the coal cars?

A. Oh, yes, they take mine props back in the coal cars; but that is a very small tonnage.

Q. How many trains do you have in and out of the Memphis terminals, freight and passenger? I mean daily trains. How many per day?

A. I have to refer to the time tables. (After examining time tables) We have nine scheduled trains in each direction. That is, five passenger trains and four freight trains.

Q. How many of those are through and how many local?

A. There are two local trains, one in each direction.

There are two Cotton Belt passenger trains in each direction, which have rights over our tracks.

Q. Are those local or through trains?

A. Those would be their through trains.

They use our tracks from Bridge Junction to Fair Oaks, and there they take their own tracks.

I can follow them up on the map, if you wish?

Q. No, sir, that is all I want.

1161 A. There is one passenger train in each direction from and to St. Louis. (I may have to connect this up with two or three cards, and it is slow.)

There is one train from Memphis to Texarkana, a local passenger train.

There is one passenger train from Memphis to Little Rock.

There is one passenger train to Texarkana, local; and one to Little Rock, local.

In the other direction, into Memphis, there is one passenger train, local from Little Rock to Memphis.

Another local train from Little Rock to Memphis.

That is two in.

However, there may be some through sleeper on any one of those tra ns.

Mr. HILL:

Q. Isn't there a St. Louis-Memphis train?

A. Yes, sir, on the St. Louis-Memphis. And there might be one on the evening train out of——

Q. Did you mention the St. Louis-Memphis train?

A. Yes, sir, St. Louis-Memphis.

I think there is a Hot Springs sleeper out of Memphis on one of those trains.

Now of freight trains, there is the Little Rock "red ball" train out of Memphis.

Mr. MOORE:

Q. Is that through or local?

A. That takes up the merchandise that is loaded out of Memphis for any point south, beyond the local division to Bald
1162 Knob, that is covered by the local freight trains. That would take all the business out of Memphis. It may be for Little Rock or it may be for points south. It leaves Memphis about 8 o'clock in the evening.

That would handle a large local business because it would be the train that would take the shipments which were wanted for Little Rock delivery the next morning.

Mr. HILL:

Q. Is not that a through train?

A. Through to Little Rock you mean?

Q. I thought you designated it as a through train?

A. You can hardly designate those as through and local. Judge because those trains handle both interstate and intrastate freight.

Q. I am not talking about interstate and intrastate?

A. That train runs——

Q. Isn't it a solid train?

A. No, sir, that train would probably set off stuff at Wynne.

If there was enough freight to make it a solid train, it would be, but whenever there is not sufficient tonnage to move it is a solid train we put in freight for any point in between, that is, carload stuff, and avoid delay.

Q. Have you covered all that train movement now?

A. That train connects at Little Rock with trains diverging. They, however, take different numbers.
1163 The train runs right through to Little Rock and gets there the next morning. It is a twelve hour train from Memphis to Little Rock. When it reaches Little Rock it would go into the classification yard and the Little Rock freight would be

taken off and the train classified. Another train leaves Memphis in the morning, Train 253.

Mr. MOORE:

Q. Freight or passenger?

A. Freight. That train stops at Bald Knob. Another freight train leaves Memphis in the evening and goes north by way of Wynne and Paragould. In the other direction, into Memphis, No. 254 starts at Bald Knob. No. 256 starts at Little Rock and goes to Memphis. No. 272 is the corresponding train between St. Louis and Memphis by way of Paragould and Wynne. Then the trains No. 295 and No. 296, are the local trains. One leaves Memphis in the morning and goes as far as Bald Knob. The other leaves Bald Knob in the morning and gets to Memphis in the afternoon. That is the description of those trains.

Q. Mr. McPherson, in order that we may understand each other in regard to the terms employed, I wish you would define what is a "local train," and what is a "through train," freight trains I mean?

A. Local trains are those that are assigned to a certain
1164 district to handle merchandise over that district. Through trains are the trains that do not load or unload any less than carload freight. There is usually a local over every district in each direction.

Q. When you use these terms in the course of your testimony, you use them in the meaning which you have now defined?

A. Local and through?

Q. Yes.

A. Yes.

Q. Now give your definition of local and through passenger trains, please, Mr. McPherson.

A. A local and a through passenger train?

Q. Yes.

A. A local passenger train is one that makes the local stops and does the local business. A through passenger is one that originates at one or other of the terminals of the road, and handles through business and such local business as may apply, between points at which it is scheduled to stop. One is scheduled to take care of the business at all stations, and the other is scheduled to take care of the through business and business between points where it is regularly scheduled to stop.

Q. In your testimony yesterday I believe you stated that the local passenger trains stop every five miles and the through
1165 trains every thirty or thirty five miles, or something like that?

A. Thirty-five miles.

Q. Now, so we will understand what trains you were referring to, I wish you would file as an exhibit a statement showing the through and local passenger trains scheduled to run:

Take this period for which Mr. Roth filed his exhibit, October, 1907, and designate in that which one, so we will know how to understand your testimony in that respect.

A. That would apply to the main line of the St. Louis, Iron Mountain & Southern between St. Louis and Texarkana.

Q. I want it for the entire state, Mr. McPherson.

A. That was my testimony. That on the other divisions of the road, all of the trains made the local stops.

I believe you will find that was my testimony.

Q. It is just to avoid confusion on this, so we can all understand exactly what we are driving at.

I wish you would file the time card which was in force during that period, October, 1907, that Mr. Roth's statistics cover.

Better specify by numbers, I suppose the local and the through trains. I am referring to passenger trains now.

A. What date did you say you wanted that for?

Q. October, 1907, I think Mr. Roth's exhibit covers. It is the period covered by his exhibit.

1166 A. That would be, then, the time card of the Missouri & Arkansas divisions. Because the Missouri Division extends down to Hoxie. Now — there *is* any more than that?

Q. No I think that will be sufficient. I understand that includes Texarkana and Fort Smith and all your line that is embraced in this suit.

A. If it takes in Fort Smith I would have to have the Central Division.

Q. I stated so much of your line as is embraced in this suit.

1167 A. Mr. Johnson tells me that the only complete file of these time cards that we have for October, 1907, were given to Haskin & Sells, and they now have them.

Q. All we want of the time cards is an exhibit of them so we can designate what you mean by the "local" and what you mean by the "through" in view of the testimony you have given; so we will know what you are referring to.

I understand Mr. Wright, one of the employés of Haskins & Sells, has them down there now and you can get them at any time.

A. Time cards going back to such a date as that would be very scarce at this time, and it might take the last file that the Superintendent of Transportation had.

Q. Well, I don't want you to put in time cards, you understand, Mr. McPherson. I want you to put in your classification from the time card. You understand that, don't you, Mr. McPherson?

A. All right.

Q. Mr. McPherson, will you please describe the rights that the various trains have on the road, one over the other?

A. The trains are classified giving them rights, and then their direction carries further rights.

First-class trains are the passenger trains.

Second-class trains are the through freight trains, and third-class trains are local freight trains.

The trains going north and east, as a general rule have
1168 rights over the trains of the same classes going south and west.

Q. Don't they have it over all other cars?

A. Well, I said that; the same classes with each other, I meant. The first-class trains have rights over the second-class and third-class, and the second-class over third-class.

Q. That would be regardless of direction?

A. That would be regardless of direction as to classification. As between their own classes they are governed by direction.

Q. Coming back to the Memphis terminal, Mr. McPherson. Could you divide the terminal expense at Memphis fairly between local and through trains? Is there any basis that you could fairly divide the terminal expense there, between local and through trains?

Mr. MOORE: Terminal expenses?

Mr. HILL: Yes, this Memphis terminal I am talking about.

The WITNESS:

A. I know of no accounting method that could be adopted for that purpose. That is to say, taking the items of operation, I know of no method that could be applied.

Q. That would be fair?

A. That would be fair.

Q. You cannot devise any plan then, for dividing those terminal expenses there?

A. No, in no other way except as it is proposed in the Exhibit, a revenue basis, generally, of the two traffics, intrastate and interstate.

1169 Q. Speaking of interstate and intrastate as a traffic, in practical operation there is no such difference as that, is there?

A. Is what?

Q. As a practical operating proposition there is no such division as state and interstate, is there?

A. In practical operation we are regardful of the state lines because of the different regulations that prevail in the different states.

Q. That is, in one state you have to carry separate coaches for negroes and whites, such state regulations as that kind; but as a practical operation, you don't operate it according to states?

A. No, we would have very many of our divisions that run over the state line.

Q. You try in your operation of the road to obey the law in the various states; otherwise the state proposition does not enter into your proposition of operating at all, does it?

A. Very little.

Q. In that chart which you filed here, Exhibit number 30, I wish you would look at that, Mr. McPherson, and explain just what you mean by the red line marked "transportation" which you carry down to about eighty-eight per cent on your scale.

A. That represents the earnings per ton, per mile, of all of the

freight traffic of the St. Louis, Iron Mountain & Southern
1170 Railway.

Q. It does not represent any of the passenger earnings, does it?

A. It does not represent the passenger.

Q. Does that mean gross earnings or net earnings?

A. That means net earnings.

Q. That would really mean then the rates charged for freight?

A. No, it don't mean the rate charged for the freight. It means that taking the gross freight revenue and dividing it by the net ton miles, you get a statistical instrument here to show an average.

Q. Well, that is based on rates, is it not?

A. It would be based on the earnings, yes.

Q. The earnings are the rates, are they not?

A. But this don't mean a rate of itself.

Q. I understand that, but it is based on rates.

A. It is based on the earnings. The earnings, of course arise from the earnings on all of the freight taken together.

Q. Does that include "miscellaneous"?

A. That includes freight revenue.

Q. I understand you divide your revenue into three classes—passenger, freight and miscellaneous.

A. That would take what we take into our report as freight earnings. It would not take in there anything except to
1171 what it pertained, just the freight.

Q. It would not take in mail and express then?

A. Oh no, it just takes in the freight earnings.

Q. This appears to have been at its highest level in 1898. Then it fell in 1899. It remained level for 1900; then fell for 1901 and remained level until 1903. It rose in 1904; fell in 1906, and rose a trifle in 1907.

I will ask you if it is not a fact that from 1903 until 1907, there was no material change in the freight tariff of Arkansas?

A. From what time?

Q. 1903 to 1907—there was practically no change in the freight tariff, intrastate, in the state of Arkansas?

A. I have not those tariffs here. I have only the last one, number 3, here, but I have been cognizant that changes have been made from time to time, not only in rates, but in classification and in rules, all of which would operate to affect the revenue.

Q. Is that your information on the subject?

A. Yes, that is my general information, that those changes have been made from time to time.

Q. Do you know what has been shown at the hearing had at Little Rock, that while changes were made from time to time, there has been no material change since the general tariff was adopted in 1903?

A. I referred more particularly to the rules, the difference in minimums and such things.

Q. It was also shown that while there have been some
1172 changes, there have been no changes of any great extent.

I believe it was shown that there were only about twelve or fourteen changes altogether, in eight years, and most of them were very small items.

A. I have not gone into that feature well enough to discuss that, Judge. It is a little out of my line. Those things usually come to me when they are issued and I glance them over. With me it is a matter more of absorbing than of studying.

Q. Assuming, for the purpose of the question, that there have been no material changes in the revenue producing effect in the Commission tariff, from 1903 to 1907: would not the fall in that line be due to changes in interstate rates?

A. No doubt the fluctuation in rates of both classes of traffic, interstate and intrastate, are reflected in here.

Q. I am putting it to you. Assuming, for the purpose of my question, that the statement I have made is correct; this falling would necessarily be due to a lowering of the interstate rates, would it not?

A. I don't know that I can answer a question of that kind. In making this chart I have stated a fact that is demonstrated by mathematics, and why that is so, I have given no particular attention or study.

Q. Are those all the factors that go to produce that line?

A. The factors to go to produce that line are the ton miles and the freight earnings.

1173 Q. The freight earnings are determined by the tariffs, are they not?

A. My agency in this matter is merely one of working that out for the purpose of showing that decrease in the purchasing power of the railroad.

Q. I understand that, but you are an operating man.

A. The study of the rate question is one that I have never given any attention——

Q. But you know, necessarily, that——

A. (Continuing) —except—I don't want to say that I am stupid or ignorant, or anything of that sort.

Q. I was not accusing you of that Mr. McPherson.

A. But there are a good many things in the tariffs that directly affect operation, that we have to know, but so far as a relation of rates and matters of that character is concerned, I have not studied that.

The minimums and requirements of things that are published in the tariffs, that affect operation, those we know as well as the traffic people and often I have something to do with it myself, but as to the rates themselves, I am not qualified to answer.

Q. I am not asking you to go into a dissertation on rates I am just calling your attention to the fact that if, from 1903 to 1907, there was no material lowering of intrastate rates for Arkansas, that fall

in this line as displayed on your chart, would necessarily be due to the lowering of interstate rates?

1174 A. That sounds all right, but I don't know that I would commit myself to it.

Q. You only assent to the sound then.

Now, take these lines that run in leaps and bounds, representative of the increased cost of cross-ties, and the twenty-nine other materials—shop work, trains, taxes: are not those various elements that should be charged to the passenger and miscellaneous earnings, as well as to the freight earnings?

A. As I understand it, there is a proportion we provide for in this exhibit.

Q. I am not talking about that, I am talking about this chart.

A. This represents merely the figures that are in those exhibits, placed in graphic form.

A. That don't answer my question, Mr. McPherson.

Q. I did not grasp your question. The freight transportation was drawn here. I am sorry I did not show the passenger in the same way.

Q. Without showing the passenger and miscellaneous as a comparative charge, this is not of any value, is it?

A. Oh yes.

Q. Do you think so?

A. Yes, I do, indeed. The freight is the bulk of our earnings and it is that that is the most susceptible to fluctuation.

Q. It could not fluctuate a great deal under a fixed

1175 tariff for eight years, as far as the state is concerned, could it?

A. Well, I do not like to answer questions that do not come within the scope of my knowledge, even if I do appear a little unreasonable in not doing so.

I am willing to tell all that I do know. I have nothing to conceal, but I don't want to go into fields that I have not explored.

Q. Well, we will do with the chart then, if you think it has value.

Q. You testified yesterday that of the main track mileage in Arkansas, approximately eight per cent could not be used in making trans-state shipments, and that but ninety-two per cent of the main track could, under any circumstances, be used by that class of traffic: where do you get that eight per cent?

A. Have you a map there of the road? I have one here, but I thought you could follow me better, perhaps, if you had one.

Q. Yes, I have one.

A. That would be, from Latour to Helena 12.28 miles. The Cushman branch 9.81 miles. The Greenwood branch 23.12 miles.

Q. What do you include in the Greenwood branch?

A. Twenty-three miles of the Greenwood branch.

Q. That must be carried over to the Cherokee, because it cannot be twenty-three miles from Fort Smith to Greenwood.

1176 A. Trans-state traffic would not use that line.

Q. I want to know what you include in the Greenwood branch, physically.

A. That takes the Greenwood branch clear to the west head block

at Greenwood Junction. You have used the words "Cherokee Junction" and we used "Greenwood." It confused me a little yesterday. We have used it so long now that I have forgotten all about Cherokee Junction.

Q. What do you call it—Greenwood Junction?

A. Yes.

Q. And that twenty-three miles runs from the Junction through Fort Smith, into Greenwood. All right. Go ahead.

A. The Coal Hill branch 3.87 miles.

The Ouachita branch, from Trip Junction to Warren, 49.40 miles.

The line from Trip Junction to Arkansas City, 7.82 miles.

The Ouachita branch——

Q. That is a coal mine spur there?

A. Yes, that is .42 of a mile; that makes a total of 106.72 miles.

Q. Now take your Helena to Latour. You connect with the Illinois Central System at Helena, don't you?

A. Yes, we connect—that is, they are in the city of Helena; they have a transfer across from Trotter's Point.

Q. A shipment from some point in Mississippi, say Clarksdale, to St. Louis, delivered to you at Helena, would be trans-state, would it not?

A. That would not be a natural shipment.

1177 Q. I am not talking about natural ones. You testified it was not used and could not be.

A. Well, it could not be. The Illinois Central would not give us any traffic they could handle themselves.

Q. That is, on account of the disposition of the Illinois Central?

A. No, it would be an unnatural——

Q. There is no physical hindrance to it, is there, Mr. McPherson?

A. I should say if they wished to give us the shipment of freight from some point in Mississippi for St. Louis, that it would be a trans-state shipment, but it would be a most extraordinary transaction.

Q. Do they ever do it?

A. No.

Q. Well, take your Greenwood branch. The Midland Valley runs into Greenwood and it runs into Oklahoma. If you bring a shipment from Greenwood to Oklahoma and deliver it to any local point on the K. & A. P. in Kansas, or anywhere else, that would be a trans-state shipment?

A. There would not be any connection possible there. They might dray something over.

Q. Have you not a physical connection with the Midland Valley?

A. I don't think we have at Greenwood. I would not state positively.

Q. If not at Greenwood it is somewhere at the coal mines?

1178 A. There might be a possibility of swinging around between coal mine tracks.

Q. And there is a physical junction at Midland Valley.

A. There is no physical connection, as I remember it now, between our tracks and the Midland Valley. There may be some

tracks belonging to the coal mines down there, which in case of accident or emergency some detour could be made.

Q. I think you will find there is. I live in that country, but I may be mistaken. However, I think you will find that there is freight handled there.

Assuming that to be true, then there could be trans-state shipments over there, could there not?

A. It never has been used for that purpose, and just now, I cannot conceive how it would be.

Q. Well, if there was a physical connection between the two roads there—

A. There would be no deliveries by their road to us at Greenwood.

Q. There could be, could there not?

A. I don't even know that it could be done, physically. I do know that it certainly never would be done.

Q. The balance of this trackage that you have given here, is just odds and ends, spur tracks and things of that kind, except the Warren branch?

A. I don't know that the Warren branch would feel complimented at that.

1179 Q. That is a little different.

A. The Warren branch is pretty near one-half of that, you will notice, Judge. It is nearly fifty miles.

Q. These little odds and ends contribute very largely to your interstate traffic, don't they?

A. That brings up a question I would like to make a little explanation about that I did not do yesterday, because I did not have the data at hand, and without it I would not want to mention it, and that is the traffic down on the Greenwood branch being interstate.

We get no mileage of traffic from the "Jenny Lind" mine that is interstate. All of that traffic takes the mileage from Coal Hill under the Arkansas regulations and tariff arrangements.

Q. Let me correct you a little about that, if I may. That is not the Arkansas Commission's tariff that does that. It is your Interstate tariff that does that, I think you will find.

A. On the business from Fort Smith we are allowed five miles and it is wholly on the state rates of the Commission.

Q. That is true, but is it not also true that it was put in by an interstate tariff.

A. As I understand it—we put that tariff in a little later on.

Q. You are correct, that the rates are the same, but it is an interstate tariff under which they were changed. You will find that on investigation.

1180 A. For that reason I took the ground that it is purely technical, as related to its character; that it was interstate traffic technically, but it was controlled by the rates provided by the Arkansas Commission; all the traffic from Fort Smith through the state, and the traffic from the points south of Fort Smith, that comes north through Fort Smith; that it was the accident of travel-

ing a short distance on the outskirts of Oklahoma did not affect the fact that Fort Smith was covered and the Greenwood branch traffic (which includes the "Jenny Lind" coal mine), by the state Commission tariff and rules as to minimums and other things of that character.

Q. Mr. McPherson, if you will look into that after dinner, you will find you were mistaken. It is an interstate tariff.

The Commission has not attempted to fix your rates on that. You fixed it voluntarily after the court tariff was put in. Fort Smith had to have the high rates until you had your tariffs filed in thirty days. They did not give you permission to file it shorter than in thirty days.

A. I presumed that was an Interstate Commission requirement, but I am speaking of the fact that we treated it as state business, because it has taken state rates and has been governed by state rules, and in looking into the question of the revenue per ton mile, it struck me that the sixty-two miles that were clipped off of the haul from "Jenny Lind" to Coal Hill, was a matter of considerable consequence.

1181 Q. That was clipped off because the coal mines were grouped by the coal companies, on a fixed rate, was it not? Everything west of Coal Hill was placed on Coal Hill rate?

A. Well, if that was it, it certainly would be regarded then as a state traffic, and in my testimony as to terminal cost I certainly should consider it state traffic because of that very fact, it was state rates and it was Arkansas——

Q. But in your classifications here of state and interstate freight, all of that is carried as interstate.

A. That has been taken into the tonnage as interstate and into the revenues as interstate.

Q. It necessarily has two terminal expenses in Arkansas, has it not?

A. Well, that is a technical condition. I merely called attention to this for whatever value it might have.

Q. The fact remains that those two terminal expenses are incurred in Arkansas?

A. They are both incurred in Arkansas, and the origin and destination of the freight is in Arkansas.

Q. Well, coming back to the question I put to you: these little odds and ends and short lines produce a very considerable interstate traffic for you, do they not, whether they produce trans-state or not?

A. Oh yes, they produce interstate traffic. I don't know so much about the Cushman branch.

Q. That is very small is it not?

A. It is a part of the eight per cent.

1182 Q. How big a part of it?

A. It is close to ten per cent of it.

Q. Ten per cent of the eight per cent.

A. Ten per cent of the number of miles, 107 miles, approximately.

The Warren branch produces a good deal of interstate traffic and it produces a good deal of intrastate traffic.

Q. On yesterday you stated: "Of the station organization it would make use of eight and one-half per cent." Where do you get that eight and one-half per cent?

A. That is the car clerks and car record clerks at such stations who take the record of trans-state traffic under ordinary conditions.

Q. How do you get at that particular percentage?

A. That is a per cent of the wages of the yard clerks and car record clerks, to the total wages of the other employés at the station. That is excluding the labor itself. It means the clerical help at the station, and the agent.

Q. You mean then, you picked out the men who have something to do with trans-state freight—you have taken their wages and charged a percentage of their wages to all the wages at that station: is that it?

A. Putting it the other way, Judge. I have excluded all the men from the station who do not have anything to do with the trans-state freight.

Q. Who are they.

1183 And taken merely the yard clerks and the car record clerks who do get that proportion of the wages of the other employés at the station.

Q. Who are the others?

A. The other employés would be cashiers and bill clerks, revision clerks, tonnage and other statistical clerks; foremen at freight houses and all of that class of station organization.

Q. You mean that none of them have anything to do with trans-state movements?

A. None of them have anything to do with the trans-state movement.

Q. And for that reason you exclude them and get this eight and one-half per cent, by the exclusion of these employés who you think have nothing to do with trans-state movements?

A. Who have no duties connected with it. We have well defined classification of station employés. We have yard clerks and we have car record clerks, men who take the car numbers in the yards, and men who make out the reports from the lists of those car numbers.

Q. If you go into that segregation of your traffic, there are a good many facilities that you use for interstate business that the intra-state business does not use, is there not?

1184 A. There possibly might be, but I don't know what they would be.

Q. Well, take your stock pens and stock yards.

A. Well, are there not any shipments of stock between points in Arkansas?

Q. That is for you to answer. I should say very slight. As a chemist would say, "there might be a trace."

A. Even if the stock shipments between points in Arkansas were only twenty per cent of the total stock shipments out of Arkansas,

that would be relative use, possibly, if it were only on the ton mile basis, eight per cent.

Q. You know as a matter of fact that your stock facilities are all for interstate shipments, are they not?

A. No. I remember that we have a claim on our hands now, of about $2800.00, for some stock that was entirely an intrastate shipment.

Q. Where did that happen to be?

A. It happened to be, as I recall now, on horses from some point north of Little Rock, to Pine Bluff.

Q. I suppose they were very fine horses, if they were in the shape of a claim?

A. Yes sir, they were represented to be first-class, blooded stock.

Q. You have another percentage here about this trans-state shipment, which I would like to have you explain:

"Eight and one-half per cent of station organization, and, on the most liberal basis, fifteen per cent of the cost of yard organization, operation and maintenance of yards and locomotives."

—. How did you reach that fifteen per cent?

1185 A. At certain points in the state there are switching locomotives that devote their entire time to local switching and do no classification work. There is no trans-state freight at those stations.

I have excluded those switch engines from consideration. I took them up with the total on the yard cost and take them out of any consideration of trans-state cost. Then by actual investigation have ascertained how many locomotives and the number of hours they worked daily at each of the other stations, and how much of that time is put into the classification yard; how much is devoted to the switching of freight house tracks, team tracks and industries of that character. Then I have allowed for that switching in the classification yard, thirty-five per cent on account of empties that would be handled in those yards—empty cars, which, to the best of my judgment, is correct.

I have divided the balance equally between trans-state, interstate and intrastate traffic. That is a very liberal allowance. It is more liberal than I would have put in an estimate for this work for any other purpose than this suit.

I have endeavored to follow a consistent plan in assigning one-half of that (or 51.16 per cent of it) of all the classification yard work to the trans-state traffic.

Q. How did you get at that division of empties?

A. That division of empties is more or less the judgment that I have formed in my years of experience, of empties that will pass through a classification yard.

It would not be based on empty car mileage, or the relation of empty car mileage to loaded car mileage, but rather on empty cars.

1186 That would be particularly important at a station like Little Rock, where there are a great number of empty cars

made; what I mean by that is that cars go into Little Rock loaded and a good many of those are distributed empty from there.

Q. You have just taken your judgment of what is a proportion of empty cars handled in a yard?

A. In a classification yard, yes.

Q. Now, Mr. McPherson, as I understand it, the way you reached that conclusion and the percentage you have used, you have excluded everyone who "touches not, tastes not and handles not" the trans-state traffic, and just confined your investigation to the men who are necessary to handle it: is that right?

A. In this yard service?

Q. I mean generally, in this calculation that I am referring to.

A. I have excluded the persons who have nothing to do with it and taken account of the remainder, some of whom it is very doubtful whether they have any connection with the interstate traffic or not. For instance, the weigher, a man who combines the duties of a weigher and a car clerk. His car clerk obligations are to keep an account of the numbers of the cars that he weighs when he——

Q. I don't care about that, I just want your general idea.

None of this trans-state business is handled in unbroken trains through the state, is it?

1187 A. We have handled a good deal of the very heaviest tonnage in unbroken trains. We do that often by agreement; export grain through from Kansas City to New Orleans.

Q. How much of it in the six months that we are inquiring about, did you handle in unbroken trains?

A. I think we did rather more of it during those six months than any other time because of——

Q. How much of the percentage of your traffic was handled in that way; taking your fifty-one per cent as a basis of your trans-state traffic, how much of that fifty-one was handled in unbroken trains during that period?

A. That I could not say. It was thousands of trains and two years have passed. I do recollect this though, that at that time some of the shippers had difficulty, I believe, in getting bottoms at New Orleans, and after they secured their ships they had to provide the traffic within a given length of time and some of that traffic we sent (as my recollection is) by way of Texarkana and some by way of Alexandria, in solid trains. My recollection is that in December of that year we moved——

Q. I don't care anything about individual movements. I want to get at your general proposition. How much percentage of that fifty-one per cent of trans-state business; would you say ten per cent?

A. On a ton mile basis it would be very high because that traffic would make a very large ton mileage. It represents eighty-eight——

1188 Q. Of course you have to use the revenue basis, I presume. On a revenue basis what per cent would it be?

A. Pretty good.

Q. What percentage of that fifty-one per cent? I want to get at something tangible.

A. I couldn't fix a percentage on that. I was trying to give you as to what I recollect as to the number of cars in one month, December 1907.

Q. Well, if that is a representative month we might get at it.

A. A ship was waiting at New Orleans (or more than one, perhaps) involving the shipment, I believe, of three million bushels of wheat.

That wheat went through in solid train loads, three million bushels, and my recollection now is that it all left the rails of the Iron Mountain—the last train load, on the 31st day of December.

I never saw a claim come back for anything on that traffic.

Q. Would you say twenty-five per cent of your trans-state traffic moved in solid trains?

A. It might not go as high as that, or it might in certain months —months of exporting grain, and at other times it might run even higher.

Q. Say seventy-five per cent, for the purpose of getting something tangible.

The balance of your trans-state traffic moves with inter-
1189 state and intrastate?

A. Moves what?

Q. With interstate and intrastate.

A. All of the traffic that does not move in solid trains—all of the trans-state traffic that does not move in solid trains, whatever that may be, moves in trains containing both interstate and intrastate freight.

Q. Do you throw those freight cars together in all of your division and classification yards, so as to get the most economy in operation?

A. We would not observe any difference; that is to say, I mean our yard men would not observe any differences between these cars so far as their actual switching was concerned, unless they were in solid train loads.

The trans-state freight forms a nucleus of the trains. It is such a predominating part of the traffic that it naturally is the nucleus of the trains. To that nucleus is added the intrastate, as well as the interstate cars that may be ready to go; and in order to make the expense of all of the traffic as economical as possible, we fill those trains out to their tonnage capacities of the engine.

Q. Unless you had this intrastate and interstate traffic to attach to your nucleus of trans-state traffic, the movement of your trans-state traffic would be exceedingly expensive, would it not?

A. Well, the movement of all traffic would be exceed-
ingly——

1190 Q. The movement of the trans-state would be exceedingly expensive?

A. Possibly, proportioned with the interstate and the intrastate; it would just raise the percentage of all of those traffics.

Q. It would make the percentage much higher?

A. Of all of them?

Q. Yes.

—. ——.

Q. By economizing in this way you reduce the cost of operation on trans-state as well as upon the other?

A. I should say wherever you get the maximum of efficiency in your service, you economize on everything, all traffic.

Q. You have this intrastate and interstate traffic that is handled by facilities that you say do not go to the trans-state: If it was not for those facilities, then your trans-state would be that much more expensive because you would not have the union to make of the two on one train?

A. Well, that is hardly a supposable case.

Q. I rather thought that was hardly supposable, so we will let it go at that and go to dinner.

1191 Cross-examination of Mr. McPherson continued by Mr. Hill:

Q. Mr. McPherson, have you heard from your report on that Fort Smith and Van Buren trackage?

A. Not yet. I have on the number of Texas cattle moved from Texarkana north, in the six months from July to December 1907, inclusive. It was 78 cars.

Q. How much?

A. Seventy-eight cars.

Q. Seventy-eight cars in that six months period?

A. In that six months period and these seventy-eight cars were moved in five different trains.

Q. Is that all the livestock you moved out of Texas during that period? Over the Iron Mountain?

A. That is all the cattle, yes.

Q. Any other kind of livestock?

A. I don't think we get any other kind of livestock out of Texas.

Q. Sheep or hogs?

A. I don't think we get sheep or hogs out of there. I think those all go through the Denison gateway.

Q. Then that exhibit which you put in in the Interstate Commerce case, 239 cars for sixty days, was not fairly representative of your traffic there, was it?

A. That was in the two spring months, Judge, in Febru-

1192 ary and March, and this is in the last half of the year.

Q. Would that be fairly representative of the spring months?

A. Well, there would be somewhat different conditions prevailing now; as I explained before, at this time we did not solicit any stock in Texas, while, either in January or February, our traffic department commenced the solicitation of live stock in Texas.

Q. Which do you say would be representative of your livestock movement, the seventy-eight cars that you now produce, or the two hundred and thirty-nine that you produced before the Interstate Commerce Commission?

A. The livestock runs so uncertainly; that is, it does not run at all certain months of the year, and certain months it does run. I should say of the exhibit in the Interstate Commerce case that the two months would be fairly normal for that spring period.

Mr. MOORE:

Q. What year was that moved in, those 268 cars?

A. That was in 1909, in the months of February and March. I want to say with reference to those months, February and March, they were selected by the attorneys in the case; they were not my selection.

Mr. HILL:

Q. It was April and May, was it not?

A. It was March and April, the 28th of February to the 25th of April, inclusive.

1193 Q. I want to read you from page 3654:

"Q. I am not talking about during the cattle season when you were moving them back empty to get cattle to bring north, but I am speaking of the season when you are not moving cattle; how many days in the year would that be on the average? Have you any idea?

A. No sir, I have not. We move some stock every day. It is a matter of daily traffic. Some seasons, some months, it is heavier. We have a heavy movement in October and a heavy movement in the fall."

A. The traffic that we move every day is local traffic that keeps up the packing-house supply and originates in our own territory. The heavy stock movement to which I referred is that stock movement which we have from Colorado that must be made before the heavy snowfall takes place in the mountains. The stock must be driven out of the valleys and shipped at certain times for their safety.

Q. Did you not file in that Texas case an exhibit showing the total livestock movement on your line for a year?

A. You mean for all parts of the System?

Q. Yes.

A. I don't think I did, Judge. I think Judge Cowan afterward withdrew his request. He had talked with our general livestock agent, Mr. Harris, and I think Mr. Harris told him that he

1194 kept those figures in memorandum form in his pocket, but afterwards it seemed that they had misunderstood each other. Anyway, that was not worked out, not as to carloads. Of course we know what the entire ton miles of that traffic was, and the entire tons of that traffic, for that fiscal year.

Q. I wish you would file, for the fiscal year heretofore referred to, your exhibit—that is, I believe it is the calendar year of 1907, is it not, Mr. Johnson, those two exhibits?

Mr. JOHNSON: Yes.

Mr. HILL (to witness):

Q. I wish you would file a statement showing either the total tonnage, or the total cars, whichever is more convenient to you—on the Iron Mountain road.

A. Just of Texas cattle, on the Iron Mountain?

Q. I don't care whether it is Texas cattle or what cattle. All of

your interstate cattle; or, if you can separate them I would be glad to have the intrastate cattle shown too. I think that would be a negligible quantity, but it might not be.

A. I don't know how our statistics are kept. I rather think, though, that that would not be separated.

Q. That the intrastate could not be?

A. It would be——

Mr. MOORE (to Mr. Hill): Had you not better make that inquiry of Mr. Johnson?

1195 Mr. HILL (to Mr. Johnson):

Q. Mr. Johnson, will you prepare it?

A. The number of tons of cattle or livestock?

Q. I would prefer to get cars, if you can, Mr. Johnson.

A. We can divide that by eleven to get the cars.

Q. I suppose so. I want your livestock tonnage, on the Iron Mountain. I have no concern with the Missouri Pacific, and if you can make your intrastate separate from it, I would like you to do that.

A. That would take the whole force six months.

Q. I would not ask anything like that of you.

A. But we can give you the total number of tons of cattle, or of livestock, either one.

Q. I would like for you to prepare that. You understand I want it for the calendar year—for the same period that you have heretofore covered in your statistics.

Mr. HILL (to Mr. Johnson):

Q. Turn to your chart again, Mr. McPherson, please, your Exhibit 30.

Q. I think you have testified that while these various prices of labor and material have gone up, there has been an increased efficiency of locomotives; increased car capacity and a reduction of grades on your line, have you not?

A. Yes, I have testified as to the forces that the Railway
1196 Company put into action to increase its efficiency, as well as to the increased cost.

Q. This chart would not reflect the actual condition of affairs without illustrating the increased efficiency of locomotive, car capacity, and of the improvement of the line, would it?

A. No, it is not intended for that purpose, and it would probably be difficult for any graphic illustration to be made that would embody all those elements.

The purpose of the chart is to show that the Railway Company's purchasing power has decreased, while the cost of all of the things that it must purchase, has increased.

It would be difficult, if not impossible, to show operating efficiency on a chart.

Q. It gets more efficiency for its purchasing power now than it had at the beginning of your statistical period there, does it not?

A. No, it does not. It is doubtful if the Railway today secures the

labor efficiency that it formerly did. The Railway Company's form of government years ago was rather of a paternal character; while now, on account of the extent and the conditions surrounding operation, and its relations to the public, it has become a constitutional form of government, if I may put it that way; that naturally has brought about a little less of the idea that this is "our railroad," among the boys, as it naturally would with the young man emerging from his minority into manhood.

1197 It is doubtful if the Railway Company today gets the same efficiency from its expenditure for labor that it formerly did.

Q. You have increased the efficiency of your locomotives at least twice, have you not?

A. No.

Q. How much?

A. Measured by the average tons of revenue freight per ton mile, the increased efficiency of 1909 over 1900, is substantially twenty-six per cent.

Q. What is the increased car capacity?

A. Just a moment, Judge. I am looking for that—I haven't got it.

With this increase of twenty-six per cent, however, of the efficiency, there comes a heavier expenditure for maintenance. The maintenance of the present day locomotive is very much greater than of the average locomotive of the year 1900; the average increase of tractive power of locomotives, as between 1902 and 1908 (I have not the figures for 1900) is substantially the same, twenty-six per cent.

The increase in the average capacity of the cars is about forty-three per cent.

Q. What is the increased efficiency produced by the movement on the line of the Iron Mountain, in Arkansas?

A. That would be rather a difficult thing to put into the shape of figures, beyond what I have given.

We get a twenty-five to twenty-six per cent larger train haul than we formerly did, but the increased capacity of cars has not

1198 helped us very much, because, while it has been forty-three per cent, the increased use of those cars has been only about twenty per cent, that is, the average tons per loaded car mile.

Q. Was that because sufficient traffic was not offering?

A. That is due to various reasons. I think the Arkansas Commission tariff will be one of the explanations, in the low minimum.

Our freight cars have an average tonnage capacity of 33.62 tons. Their minimums on very many articles are not one-half of that amount, and my recollection is that there is no minimum in Arkansas that is higher than 30,000 pounds. We have those difficulties to contend with.

Q. No minimum higher than what?

A. Thirty thousand pounds.

Q. You had better look at that, Mr. McPherson.

A. I said I thought that would show that. I still think that—

perhaps coal and lumber would be the heavy commodities, and they, I think, are fixed at thirty thousand pounds.

Q. Well, I don't care about running into too much detail. The point I am getting at is this:

Your chart has not taken into consideration, in attempting to describe graphically the situation, the opposing forces—the increased locomotive efficiency, increased car capacity, and the reduction of grades on your line, has it?

A. No, it has taken in only the forces that are working against economical operation, and not those that are working in
1199 favor of it.

Q. Without both forces being shown the chart would not be of any true value, would it?

A. Yes, the chart would be of its one hundred per cent value, for the purpose for which it was filed, and that is to show the increasing trend of the articles the Railway must buy and the decrease in the trend of its purchasing power.

Q. In other words, it tells one-half the story, but not the whole story.

A. It tells all of this story.

I can illustate that perhaps, by taking the year, say, of 1906. We will say that there has been no purchase of power since that period, and there has been no cutting of grades since that time, notwithstanding which, the trend of the cost of the things which the Railway Company must buy is upward, while the trend of the purchasing power of the Railway Company continues to be downward.

Q. That is as to freights only. Is it downward as to passengers?

A. When I considered the passenger phase originally in this matter it was a fixed unit of one thing; it was either three cents a mile or two cents a mile (or something in between there) and for that reason I did not think it of much importance to put it in, because it was such a continuing factor.

Now, of course, it would have shown a very heavy reduction when the two cent rate law took effect, and probably up to
1200 that time it would have traveled a base line; then it would show, with the restoration of rates, a return to near the base line.

Q. What about your miscellaneous income from mail, express and other miscellaneous sources: has there been any decrease in that?

A. Well, there has been a small decrease in the mail, due to changing the divisor from six days to seven days.

Q. Changing what?

A. The divisor from six days to seven days. It is considerable, but in proportion to the entire earnings of the road it would, of course, be small.

Q. How about your express receipts?

A. Our express receipts figure in the calendar year of 1908—the express follows the freight usually, in its volume. That is to say, the conditions that make freight business active, make express business——

Q. 1907 is the year we have particularly under inquiry. How about that?

A. It was at its maximum.

Mr. HILL (to Mr. Moore): Mr. Moore, just a moment, while I think of it. I wish you would furnish me your express and mail contracts covering the period of 1907. I spoke of that once before

(To the Witness:)

Q. Mr. McPherson, in calculating according to your revenue theory, the practical effect of your division of mail and ex-
1201 press, is to charge these accounts with the same proportion of expense that the interstate business is charged with, is it not?

A. Somewhere there. Substantially in that relation, rather than in the intrastate relation.

Q. When you increase the expense of intrastate business you decrease proportionately the expense charged to mail and express on intrastate business also, don't you?

A. Yes, that would naturally follow.

Q. Do you deduct the expense of handling mail and express and other miscellaneous business, on a revenue basis, leaving the remainder of the expense to be divided between state and interstate?

A. Do we deduct the expenses? That would be a matter for the accountant to answer, but I believe I stated that both the express and the mail are in the custody of the Government employés, and the express employés, respectively.

There is some expense attending the handling of mail in its delivery to and from stations located within eighty rods of the depot, in whatever state that mail may be put off and taken on.

Q. I am not caring about those details, Mr. McPherson. You have gone into that before.

I am getting at the question of the way you handle mail and express in your accounts. What do you do with your mail and express when you go to add the extra cost that you have testified should be added to intrastate traffic?

1202 A. The process I think was explained by the accountant. That is a matter of making figures that I do not handle, and of which he is more competent to speak than I am.

Q. I am not speaking of actual figures. I am speaking of a basis. You have spoken of the revenue basis as a proper one for dividing expenses. I want to know what that basis is, the way you understand it. The actual figures are there and the accountant has explained the figures, but I am talking about the basis.

A. The miscellaneous expenses are made up of a number of items, and in order for me to explain the basis, it would be necessary for me to take the whole formula by which that is reached, and I have it before me here, just as it was explained by the accountant. It would probably be repeating his testimony in that respect.

Q. Go ahead.

A. I have got the figures that I made myself at my office—in figuring these for the new percents, but I don't think I have got them here.

Q. I don't care about the calculation. I just want to get your basis, your method.

Mr. MOORE (to the witness): If you wish to see Mr. Johnson's formula, if you wish to see the figures, — is on that exhibit (Indicating).

A. Yes, I worked it out myself. I worked it out in pencil. After the apportionment of the miscellaneous expense to the state, has been ascertained, which is reached (in the case of the mail
1203 service) by crediting the mail route (if it is located entirely in the state) to the state in its entirety; that is, where the route is located entirely within the state, and where the route runs between other states and divisions, it is made on the basis of actual mileage in each state.

The express companies give no details to the Railway Company, of their operation, and the division would go on the basis of the gross freight earnings.

With an exact division, adding the miscellaneous earnings to the principal traffic, the additional cost (whatever it may be) that we would assume the intrastate traffic should bear, is added to the actual percent of intrastate traffic to get a basis of new percents, which results in reducing more than 100 per cent.

I am, perhaps, not facile in explaining myself. That is not my particular business.

After this increased per cent is ascertained, the new percents are obtained for a division of the state, intrastate and miscellaneous traffic, which would result in increasing the proportion of the intrastate, and decreasing the proportion of the interstate and the miscellaneous. On this basis the miscellaneous earnings would bear less: the intrastate more and the interstate traffic less of the cost.

Q. That is the revenue basis method of calculating the effect of the miscellaneous revenue and miscellaneous expenses upon the intrastate business, as you understand it?

1204 A. That is my attempt to explain the formula, as I understand it. The revenue basis is, of course, a division of the expense of operation as between state and interstate traffic, on the basis of the revenue derived from the traffic, plus such additional cost as the intrastate should bear.

Q. You are acquainted with Mr. Kimbell, the assistant auditor of the Cotton Belt, are you not?

A. Mr. R. E. Kimbell? Oh, yes.

Q. You regard him as a competent accountant?

A. Why, yes, I never heard anything to the contrary, although I don't know that I have ever had up with him more than one or two matters.

Q. It would be more in his line of business to work out this problem, than it would be in yours, would it not?

A. It might be, in the details; I think I would know more about the generalities of it.

Q. I want to read to you from his testimony, page 251, and ask you how near, if at all, you agree with him:

"Q. Then you think the proper way is to just lay aside a proportion of miscellaneous revenue and make the calculation with the added cost for intrastate business as between state and interstate?

A. That is the theory laid down by Judge Vandevanter and it seems to be sound.

Q. That is the theory which you seek to present in this case, isn't it?

A. Yes sir.

1205 "Q. Under that theory the practical effect of the mail and express is to charge the expense of it in the same proportions that the interstate business is charged with, isn't it?

A. That would not be the same case after you had——

Q. I am speaking of before you take the added cost.

A. Yes, sir, on the straight revenue basis.

Q. On the straight revenue basis the mail, express and other miscellaneous items would stand the same proportion as the interstate business; and you want to leave it after that, and add what you take to be the extra cost of the state business?

A. Yes sir, deducing accordingly from the interstate."

A. No, I don't agree with it, because it makes no allowance for the larger cost of acquiring the state miscellaneous earnings than the interstate.

Q. You think there is a larger cost in acquiring the state miscellaneous earnings than there is in the interstate earnings?

A. Oh yes.

Mr. MOORE: Did you say interstate?

A. Intrastate, than interstate.

Mr. HILL:

Q. Have you any data to determine if mail and express are costing you more than the interstate business?

A. Is costing more in the interstate than the intrastate?

Q. No, have you any data to determine its relative cost to either?

1206 A. I have no figures. I know from my general experience and observation; going over the road; my knowledge of the business as it is done, and the expense to which the Company is put for handling the state mail, locally, in its delivery, that the cost of the state mail must be as much greater than the cost of the interstate as that expense represents.

That is due to very much the same reason that would affect our division of freight and passenger traffic; there is the delivery of the mail and the putting on and putting off of the mail, while with the trans-state mail there would be no physical handling by the Company; it would remain in the car, from St. Louis to Texarkana, on through to the ultimate end of the car's run.

Q. Is there any way to divide that mail service between state and interstate?

A. No, there would not be any way to divide it between state and interstate; it would require a knowledge of the volume of each class, which the Government would not furnish.

Q. Are you not paid in proportion to the service that you render on that?

A. We are paid by the pound, and for space, all of which would be shown in the contract. It is rather complex to attempt to recapitulate it.

Q. I have called for that contract and we will not go into that. I believe you stated in your testimony, that you estimated two to one, on a revenue basis, for the extra cost of intrastate traffic,
1207 and five to one on the ton mile basis. I wish you would explain that difference.

A. You wish I would explain—how, between quantity and revenue?

Q. Between two to one on the one basis, and five to one on the other.

A. Did I not say "more than two to one?"

Mr. MOORE: I think you said that.

A. I believe that I expressed myself not exactly that way. I believe I used the word "quantity."

Mr. HILL:

Q. Used the word what?

A. Quantity.

Q. Well, I am not so particular about the way you expressed yourself. I want you to explain why you put it at one figure on the revenue basis, and on the other on the other basis.

A. That is based on the statistics shown in this case—I don't know the number of the exhibit that contains that revenue basis—that answer applied to the freight and not to the passenger traffic.

Q. My question called for the freight traffic, not the passenger.

A. It was in looking for this that I lost the connection. I beg your pardon.

Q. You put thirty-five per cent on the passenger traffic, as I remember it?

A. Yes; in Exhibit number 3, and sheet number, the di-
1208 vision of expense as between interstate and intrastate, on the revenue basis would be 13.08 per cent for intrastate, and 86.92 per cent on interstate. If the expenses were divided directly on the basis of the relative revenue received from each class of freight traffic, that is, between intrastate and interstate, those would be the divisions. That deals with the revenue.

In dealing with quantity, I will have to turn to Exhibit number 26—well, here is Exhibit number 5; the percentage of total ton miles which would represent a quantity division, would be—intrastate 7.25 per cent; interstate 92.75 per cent.

I gave as my opinion that the division should be made as to quantity at least five times greater, proportionately, for the intrastate business, than the interstate, and it so happens that on the revenue basis the division of expense would, without any addition, be about two to one.

Therefore, in expressing my calculations, I have borne in mind that relation.

On a quantity basis the relation would become about thirty-six to sixty-four per cent.

On the revenue basis, as I expressed it, to more than two to one; the relation I intended to convey would be substantially the same.

Q. Where do you get your thirty-six and your sixty-four?

A. Well, I took that roughly, as representing the multiplication by those factors of the intrastate proportion of the traffic, both as to quantity and as to revenue, shown in the first column of Exhibit number 5.

1209 Figuring that over carefully might make a small change there, but it is only one of relation.

Q. I would like to have your formula for getting that portion out of that column of statistics.

A. If I were to do it I should have to go back and take the tonnage and figure it out.

Q. I don't mean your actual calculation. I want your formula so we can work it out.

A. I took the figures roughly, on the ton mile basis, and the division of expense would be, 7.25 per cent intrastate; 92.75 per cent interstate, and just roughly multiplied the seven by five.

Q. Why did you multiply that by five in answer to your question? Seven times the quantity?

A. Seven times the proportion.

Q. Five times, you mean?

A. Yes, five times the proportion.

Q. What is your basis for the five?

A. It is pretty hard for anyone to give exactly all of the reasons that lead to a conclusion.

Q. Mr. McPherson, here is the point I am getting at; is it your experience or is it some data that you have?

A. If you will allow me to finish, Judge, and be a little patient with me.

Q. All right, go ahead.

A. In the thirty-two years of experience I have had in transportation work and the work growing out of transportation, the best of my judgment is that the relation of between four and eight to one, exists in the intrastate freight traffic and the interstate freight traffic.

1210 That is, the difference is somewhere between four and eight. Probably no one can tell on the moment, exactly how he reaches a final conclusion, but my conclusion in this respect is reached the same as any other conclusion that I have ever reached, and that is the best of my judgment, from my experience.

Q. That comes to the point I am trying to develop: it is a question of experience with you and not a question of actual data.

A. There is nobody who can give actual data. It is not susceptible of division by any accounting process.

1211 Q. To sum up your reasons for your testimony it is this: you take the flat ton mile proportion of state and interstate traffic, namely, 7.25 per cent intrastate and 92.75 per cent interstate, as shown in exhibit 5, and multiply the state ton miles per cent by five,

and use the figure so arrived at as your factor in getting at the percentage to ascertain the cost of the state business?

A. No sir, no sir, I would not figure with the interstate to get it just that way. I merely gave it that way because the relation seemed to me as seven was to 92. And I was merely trying to express in figures what I had express- in five times and in more than double.

Q. Well, then, you were making your estimate irrespective of the exhibits and merely using the exhibit to illustrade your point: is that it?

A. It so happens that the relation between the revenue basis and the quantity basis was as two to one in favor of the revenue basis.

Now, in my opinion, five times the expense attended the intrastate traffic for the same ratio of relation of ton miles as the interstate traffic, it would obviously follow that more than double the revenue basis, and five times the ton mile basis, was somewhere in relation.

1212 In my analysis of the ton mile theory I developed some relations that were exact, or reasonably so.

And in my testimony as to extra cost I repeated that testimony to a considerable extent.

The application of it was just at random, from the fact that they happened two to one as between revenue and quantity.

Q. That was more an accidental incident than one which controlled your judgment, was it?

A. No sir, my judgment is controlled by the reasons I have given even without these figures; and in my explanation I assumed that I could have stopped with "more than twice the revenue basis." But, probably liking to hear myself talk I rounded out the general proposition.

Q. In making your calculation a few minutes ago that this relation was 36 to 64 you multiplied that 7.25, which is the percentage of total ton miles of intrastate traffic, by 5, didn't you?

A. Yes sir, I just made it mentally from glancing at the figures.

Q. That was your method of reaching that percentage?

A. Well, it would be immaterial what that relation was. It is as 5 to 1, whatever it would develop. And 5 to 1 is giving the benefit of the ratio of 8 to 1, or taking at least, the least benefit of the difference with due consideration to the trans-state traffic.

1213 My conclusions, however, were not based on that exhibit. I merely used these exhibits as illustrative of the relation of those quantities.

Q. I believe in the Missouri rate case that the percentage was 13 where this is 7.25: if that were the case would you use that multiple of 5 there?

A. In the Missouri rate case I testified that the difference was somewhere between 4 and 8.

That is, it was somewhere between 4 and 8 times as expensive to conduct intrastate traffic as interstate traffic. And of course I brought to bear in that conclusion my experience and the relation the trans-state, interstate, and intrastate traffic bear to each other and the several matters I gave in evidence, as well as the operation of

my mind upon that point, the same as it would in forming a conclusion or a judgment in any other matter in which I had a large experience.

Q. Still, I do not believe that is an answer to my question, Mr. McPherson.

A. I will answer your question that my conclusion was reached without anything in exhibit 5. I turned to exhibit 5 because there was a certain relation between quantity and revenue which I thought perhaps I could express. But possibly I did not do it mathematically correctly. I did it as one would do as he runs.

Q. Still, I do not think that is an answer to my question, do you, if that figure had been 13, as it was in the Missouri case, whether you would still multiply that by 5 in arriving at that conclusion.

1214 A. I don't know what I did then in arriving at that conclusion. It is a long time ago. And I doubt very much if I have the figures in mind. I do not recollect now what they were.

Q. I believe among the numerous offenses which you charge against the ton mile basis, that one of them is that it reduces to a common level the elements of bulk distance, weight and risk; isn't that true?

A. That is correct.

Q. In using the revenue basis or theory don't you reduce the rates or price for hauling the commodity to a common level?

A. Oh, no. The first class rate and the second class rate and the third class rate and all other class rates and commodity rates that have considered these difference in character, volume, risk, bulk and otherwise are taken as a result of the work, not as a measure of it. The revenue is the result.

Q. Does it bear the proper relation to the work done?

A. I never have said that I thought the revenue basis was an exact basis to use, but I believe it has less objections than any other basis, and that there are more reasons why it is logical than any other basis that has been suggested. And it expresses a result of the things that have been done, after they are done.

Q. I don't believe that is an answer to my question, Mr. McPherson.

1215 A. You do not believe it is?

Q. No.

A. Will you kindly read the question? I certainly mean to be responsive.

Previous question read as follows:

Q. Does it bear a proper relation to the work done?

A. I do not know that it bears an exact relation to the work done. That is doubtful. But it probably comes nearer doing so, considering all of the elements, than the other basis.

It, of course, does not deal with quantity. It deals with what has been paid for the quantity transported; and that has considered, undoubtedly, the elements of character, bulk, risk and distance.

Q. You mean by that the amount paid to the railroad company and not the cost of the transportation?

A. No sir, it is the amount paid to the Railroad Company for the transportation.

Q. Does it bear a proper relation to the cost of transportation?

A. Here again I will have to answer very much as I did before. It comes nearer a proper relation with the cost than with any quantity consideration, because of those elemental differences that I expressed in my last answer.

Q. Isn't it a fact that rates are largely based upon competitive conditions and not upon cost of the service?

A. I have not qualified as a rate man, but from my
1216 general knowledge of the railway service, business interests, even though located in different sections of the country must be considered; and in all probability competition must likewise be considered as between the railroads.

In other words, you have to deal with the competition between communities and the competition between the railroads. There is that element entering into rate making, no doubt to a considerable extent.

Q. Where that element enters into rate making, necessarily the revenue received does not bear a proper proportion to the cost of operation, does it?

A. I do not think that would necessarily follow.

Q. It would naturally follow, whether it necessarily followed or not, wouldn't it?

A. No sir I do not think it would naturally follow. It might follow but I do not think it would generally follow.

Q. Wouldn't it really be an accident if they did bear a proper relation to each other where the rates were fixed by competition and not by cost of service?

A. Now as to that I will get back to my other answer that of course the revenue basis is not perfect, but it possesses less objections.

Now, if the ton mile theory and distance were to prevail, communities would be put out of business.

Q. We are not arguing the ton mile now. We are arguing revenue. We will give you an opportunity on the ton mile
1217 theory later, but right now we are considering the revenue theory and I call your attention again to that last question of mine. I would like to get a more definite answer, if you can give it.

Previous question read:

A. Judge, I think that has been discussed so largely of late by people who are versed in traffic and rates, who are so much better able to answer that question (such as a rate making officer) that I ought to be excused from expressing an opinion, where I do not know the rates from here to New York even, on the classes.

Q. But, Mr. McPherson, you are put forward as an expert to speak for your Company on that matter and I think I am entitled to have your best judgment on these matters. You have given this as your best judgment on this theory and I want to find out the different elements and the different bases that constitute it.

A. I thank you for your compliment, Judge, but I have not qualified as an expert on rate making.

Q. You have on the revenue theory though.

Well, I will put this concrete proposition to you:

I believe you have testified that lumber is the largest single commodity handled by the St. Louis, Iron Mountain & Southern Railway, haven't you?

A. No sir, not the largest single one. I said that lumber and grain were the dominating commodities.

1218 Q. Well, lumber is one of the largest, at any rate, isn't it?

A. Oh yes.

Q. I believe the lumber rates are fixed from Southern Arkansas, Louisiana and Texas in a zone, with a rate of 18 cents from that zone, composed of that territory to St. Louis: do you know that to be a fact?

A. I do not know what the rate is. I know there is a zone consideration of territory in order to enable the various mills located at different points to compete with each other; but what the rate is I do not know.

Q. Assuming, for the purpose of my question, that I have correctly stated it, then your revenue derived from your lumber traffic would in each instance from that large territory represent a different cost of service, wouldn't it?

A. It would represent the result of the revenue we derive from the service.

Q. Well, if you take the revenue as a measure of the service it would represent differently upon each particular shipment from each particular point.

A. Oh no, as I said before, that is not an exact basis, but it has less objections than the other bases, for the reasons I have given.

Q. I am not arguing that with you now, but I am just coming down to the fact.

1219 A. In gathering together the income a company has received from all its freight traffic, it is more reflective of the value if you endeavor to separate the cost of operation as between the two classes of traffic.

Q. Well, there is a lumber plant at Farrell and another large lumber plant at Blissville, about one hundred miles further down the same line, and the shipments from those two plants into St. Louis would each pay the railroad company 18 cents per hundred. There would be a difference in the cost of the service of those two shipments?

A. Undoubtedly. That is a sacrifice that the Railway Company must make to enable the business interests to compete with each other on an equal basis.

Q. If there was a shipment, say from some Southern point in Louisiana to St. Louis, passing by Blissville and Farrell, it would still pay in eighteen cents per hundred revenue, and there would be a still greater increased cost of service, wouldn't there?

A. That again would be an act of the railroad company that was prompted by affording different localities an equal chance in any particular market—say in this case the St. Louis market.

Q. But the man at Farrell (just below Little Rock) would be paying the same as the man down on the Gulf coast, for a very

different cost of service; and you would take the revenue derived from those two shipments to measure that cost of service wouldn't you?

1220 A. The line from Farrell you say to Little Rock?

Q. No, I say from Farrell to St. Louis. Farrell is just below Little Rock.

A. Then I did not get your question. I did not understand you had illustrated a local shipment.

Q. I did not. I might have stated my question wrong.

The previous question is here read.

I am still speaking of a shipment from those points to St. Louis.

A. Yes sir, that would be the effect. There would be compensating elements, of course.

Q. That would be ignoring the element of distance and reducing to a common level those prices, wouldn't it?

A. Those rates?

Q. Yes. And cost of service.

A. Well, the distance does not control altogether in rate making.

Q. But that is a fact that I have stated to you, isn't it?

A. In your illustration the element of distance would be considered undoubtedly as between objective points, but as between Farrell and the other points you mention——

Q. Any Southern Louisiana point.

A. That distance would be ignored in order to give the two localities an equal chance at the market.

Q. I am not arguing the philanthrophy of the railroad in establishing those rates, but am merely trying to get the effect of

1221 that philanthropic purpose after they are established; and that would be to ignore the element of distance in the shipment I have instanced, wouldn't it?

A. In that particular case it would be.

Mr. MOORE:

Q. Do you know what the limits of that zone that you speak of are?

Mr. HILL: I think it is about Little Rock, but I do not know definitely.

Mr. MOORE: Do you know what the limit South is?

Mr. HILL: I think it is all the way to the Gulf.

Mr. MOORE: Do you know.

Mr. HILL: Not positively. I know the heavy shipments from Little Rock to Texas operate under those zone rates, but outside of that they do not.

Q. Mr. McPherson now take the shipments the other way: you know something of Texas common points, don't you?

A. I know there is a blanket in Texas, a large one.

Q. Just explain how a shipment from St. Louis would go down to Texas.

A. I do not know the area of that blanket exactly. I do not know the line.

Q. I have an interstate tariff here that would give it to you. I will not go into the details, but practically all the territory South of Texarkana, with the exception of El Paso and a few other points, is in it, isn't it?

1222 A. You mean it is the same all over Texas?

Q. Yes.

A. I do not know. I listened to some testimony in one case here, and my recollection is that the line was Colorado City.

Q. What is that?

A. My recollection is that the line was placed at Colorado City but I am not positive on that.

Q. I do not care anything about the detail. But it is a fact that a large portion of the Texas shipments go down there in the same rates, to the different points, and different distances in Texas: isn't that true?

A. Well, I don't know. I suppose it is. You are taking me beyond my depth, into the rate region.

Q. We will assume that to be true. Here is this tariff for the Southwestern line, tariff No. 1-A. You can look that up if you are not satisfied to assume that to be a fact.

I have an example here which Mr. Hamilton has kindly drawn off from that tariff, and we will assume his facts to be correct, and you can verify them if you desire:

Assuming three tons of first class less than car load freight exactly similar in character: one ton each consigned respectively to Marshall, Texas, on the T. & P.; Devine, Texas, on the I. & G. N.; Houston, Texas, on the I. & G. N.; all loaded at St. Louis

1223 and forwarded via the St. *St.* Louis, Iron Mountain & Southern Railway to Texarkana.

The first class rate from St. Louis to each of the points mentioned is $1.47 per hundred pounds, equivalent to $29.40 per ton.

Your current divisions with the Texas lines would allow the Iron Mountain for its haul from St. Louis to Texarkana, on the ton to Marshall, Texas, $20.58; on the ton to Devine, Texas, $14.77; on the ton to Houston, Texas, $19.31.

In each case you would have to perform exactly the same service in handling each ton on your road, and necessarily, incur the same actual expenses.

But if you use the gross revenue received by the Iron Mountain as the basis for apportioning the expense of these three shipments respectively, you would get a different expense for each shipment, wouldn't you?

A. That would be apparently true.

Q. That would be reducing the distance and the cost of operation to a common level pretty near as bad as the ton mile.

A. We will take the reverse of that; now, then, take your short distance. You are dealing with distance as a fairly good average, your five mile rate and your ten mile rate and your 25 or 50 mile rate are greater proportionately to the mile—that is to say, in one

case you have lengthened it out and in the other you have shortened it; and you are coming to a reasonably fair average in the end.

Q. But on those shorter rates you get more revenue,
1224 don't you?

A. That is true. That is exactly what I mean by saying that shortening the distance you get more revenue and in lengthening the distance you do not get proportionately the same revenue.

Q. But here in your shipment to Texas common points you get a different revenue and the same expense for each.

A. In this averaging of distances of course you have the length of the haul again to consider.

Q. Isn't all of your coal shipped on a blanket or zone rate?

A. No sir, I do not think it is. I think in Arkansas it is. It is shipped out of the coal district in Arkansas by making the zone a beginning; that is to say, all of the coal lines are located as at Coal Hill.

Q. Isn't that true of coal shipments generally throughout the country?

A. Well, the coal territory? I do not know that the coal territory is scattered quite as baldy as that.

Q. Isn't that true of all the coal that is shipped?

A. We have the Illinois coal territory, which is a comparatively small territory.

Q. Isn't it true that coal is shipped on the same rates out of practically the same zone?

A. Oh, yes, and it is the same doctrine there, to give all engaged in that business a common chance at the market.

1225 Q. I understand that in making your division you first locate all your revenue—you can locate all your revenue that you derive from Arkansas?

A. Oh, yes.

Q. That is a locatable factor?

A. That is, our freight and passenger revenue.

Q. And for the State as against the entire line?

A. Yes sir.

Q. Now where you have revenue from shipments where two or more States are interested, how do you allot that revenue?

A. That is divided on a straight pro-rata per mile basis.

Q. Is that the track miles that it travels over?

A. For freight it is a pro rata per mile basis; for passenger there is some constructive mileage used, where the rates are different in different States.

Q. If you had 100 miles of haul, 50 miles in Arkansas and 50 miles in Missouri, you would give half of that revenue to one State and half to the other?

A. In ascertaining that revenue, yes.

Q. Don't you know that the rates in Missouri and in Arkansas are quite different?

A. I have never made a comparison of them.

Q. Take the fourth class less than car load rate, and in Arkan-

sas it is 32 cents per hundred miles of haul, while in Mis-
1226 souri it is 24 cents per hundred miles of haul.

Mr. MOORE: Intrastate or interstate?

Mr. HILL: Intrastate.

Mr. MOORE: You are talking about interstate.

Mr. HILL: No sir I am talking about another thing now.

Mr. MOORE: You are trying to divide the revenue between Missouri and Arkansas. You cannot divide intrastate revenue when the intrastate and interstate rates are not the same.

Mr. HILL: I am not talking about that at all. I asked him how he divided that interstate shipment and now I am asking him if the rates are not very different in the two States.

Mr. MOORE: Do you mean interstate or intrastate rates?

Mr. HILL: Intrastate.

I have a question predicated on an example that I wish you to work out:

The fourth class rate from Carondelet, Mo., to Devine, Texas, via the St. Louis, Iron Mountain & Southern Railway to Texarkana, and the T. & P. and the I. & G. N. beyond, is $1.02 per hundred pounds. On this rate your current division would allot the Iron Mountain for its haul of 484 miles to Texarkana 50.4 cents per hundred pounds, or $10.08 per ton; or at the rate of 2.08 cents per ton per mile.

1227 As you in dividing revenue common to two States use a track mile basis, on shipments of this character, you would allot to Missouri and Arkansas the same revenue per ton per mile, wouldn't you?

Mr. MOORE: Do you mean in alloting the proportion that would go to the Iron Mountain as between Missouri and Arkansas?

Mr. HILL: In dividing the revenue between Missouri and Arkansas.

A. That seems to be the case.

Q. As you in dividing the revenue common to two states use the track mile basis, on a shipment of this character, you would allot to Missouri and Arkansas the same revenue per ton per mile, wouldn't you?

A. Yes sir because you would allot the relative mileage over which the shipment traveled over two States.

However, I want to say I am unacquainted with these divisions to the same extent I am unacquainted with the rates.

Q. On such a Texas shipment weighing one ton, a hundred mile haul in either Missouri or Arkansas would (on your basis of allotment) earn you gross $2.08 from Carondelet to Devine:

Your hundred mile fourth class rate in Missouri is 24 cents per hundred pounds, or $4.80 per ton:

Your hundred mile fourth class in Arkansas is 32 cents per hundred pounds or $6.40 per ton.

1228 Assuming a solid consignment of one ton of any fourth class commodity for Devine, Texas, loaded at Carondelet, Mo.; and also an exactly similar shipment of intrastate freight loaded in

the same car, destined to Funk, Mo., which is 100 miles South of Carondelet:

Assume that the car goes down to Funk, Mo., and that the shipment for that point is taken out there; and that the car goes on down the line to Little Rock, Ark. (the Texas shipment remaining in the car) and that at Little Rock an intrastate shipment exactly similar to that previously mentioned is put into the car, destined to Boliver, Ark., 100 miles further South. When the car reached Boliver, Ark., the shipment for that point is taken out there and the Texas shipment remains in the car and goes on toward its destination.

Now if the 100 miles in Missouri, which your two shipments (the interstate and the intrastate) traveled together, the interstate shipment earns gross $2.08 and the intrastate shipment earns gross $4.80. For the 100 miles the Texas shipment and the Arkansas shipment (interstate and intrastate) travel together in Arkansas, the interstate shipment earns gross $2.08 and the intrastate shipment earns gross $6.40.

Now take the coincident movement of the two shipments, the 100 miles in Missouri yields a revenue, interstate $2.08 and intrastate $4.80; assuming that there were no other shipments in the
1229 car and that it cost say $5.00 to move the car 100 miles (by "moving the car" I mean all the expense incurred by the Railroad Company) then on a revenue basis division of expenses you would assign of this expense $1.50 to the interstate shipment and $3.50 to the intrastate shipment.

Under the Arkansas illustration I have given you, following the Missouri illustration just given, and again assuming a cost of $5.00 for moving the car 100 miles, your revenue from the interstate shipment being $2.08 and from the intrastate shipment $6.40, your division of expense for the Arkansas movement on the revenue basis would result for the interstate $1.20, and intrastate $3.80.

So the mere accident of a higher State rate in Arkansas makes a similar shipment in that State cost more to handle than an exactly similar shipment in Missouri under similar conditions, isn't that a fact?

A. I do not remember that question. It is too long for me.

Q. Let the stenographer write it and you can answer it in the morning.

A. All right.

Q. Then I would like you to add 100% (which you say is the extra cost for intrastate movement) and see where you would land.

A. Very well.

Q. There is another effect of the revenue theory that I want to discuss with you:

1230 The more you increase your state rates, the higher you make them, the greater cost you apportion to the State on the revenue basis, don't you?

A. You do not increase your cost of operation. But if the revenue proportion of the State as against interstate increases, of course

there is a proportional increase in the apportionment of the expense to the State.

Q. You increased your passenger rates from two cents to three cents when you got the injunction, and if you make your calculation under the revenue theory after that increase was made, it would add approximately 50% to the cost of operation wouldn't it?

A. No sir there is nothing added to the cost of operation?

Q. Under the revenue theory?

A. The cost of operation is the same as it was formerly, but the division of that cost, whatever it might be, would be increased proportionately, but that does not apply to the State line? The rates were increased in Missouri to three cents a mile.

Q. I am speaking of——

A. The interstate rate was also increased.

Q. Was your intrastate passenger rate increased?

A. Yes sir. So the relations would not be disturbed.

Q. It was not increased concurrently with your passenger rate increase, was it?

A. I presume not, because it would require the period set
1231 by the law, for the filing of tariffs, before the change could be made.

Q. Then that period computed according to the revenue basis, you would be charging 50% more on operating expenses in Arkansas wouldn't you?

A. I do not think there would be that relation. I do not know how that would figure out. But whatever way the accountants would figure of course there would be some additional cost to Arkansas. That is, the proportion would not be the same.

Q. But the result of this inquiry, the determination of expense as between state and interstate, that increase of the State rate would carry an increase of the apportionment of State expenses, until such time as the interstate rates were correspondingly raised.

A. Yes sir it undoubtedly would.

Q. The interstate rates——

A. But they were both too low.

Q. I am not arguing that. I am talking about the revenue theory now and not whether they are too low or too high.

If the interstate rates were not increased and the State rate was increased, you would be burdening your intrastate operation with additional cost, according to your revenue theory, wouldn't you?

A. Yes sir. We think it is proper to do so, to bear its proportion.

1232 Q. There would not be any actual increase in the cost of operation?

A. No sir there would be no actual increase in the cost of operation, but the apportioned part of that to the State would be increased under those circumstances.

Q. It is in evidence here that you increased your intrastate freight rates very materially. There is a good deal of difference as to about how much you increased them. Your accountant figures they were increased 42%. There was some increase in the interstate rates,

some two or three months later, but not a proportionate increase, however.

During that interval, during the time your state freight rates were increased 42% until there was an increase in the interstate rates, according to your revenue theory you would be very largely increasing the cost assigned to the State, wouldn't you.

A. I do not know how the accountants handle that. I do not suppose that enters into the accounts in that way. I suppose this is an illustration.

I would have to ascertain from the accountants whether they handle it in that way, which I doubt.

Q. I am not speaking of their books they keep, but I am speaking of the exhibits they filed in this case, made up according to the revenue theory.

Mr. MOORE: You do not mean referring to the period we are inquiring into?

Mr. HILL: I say the accounts made up as these exhibits
1233 are made up.

Q. To illustrate, that change went into effect on November 2nd. Suppose you make up an exhibit of your business and charge against Arkansas and charge against the interstate business as of the first of January, before any interstate increases had taken effect: the mere fact of your increasing your state rates 42% would very largely increase the expenses you apportion to the State, wouldn't it?

A. It would if you were going to make an illustration of that sort to cover that period.

In point of fact, I do not understand there is anything of this sort taken into the accounting.

Q. It is to be hoped it was not.

I do not suppose you get your revenue theory on your books at all, do you?

A. I do not keep the books, Judge. The effect here is to get at the truth and we believe that the revenue theory comes nearer that than any other basis that has been proposed. This is not advanced here, as I understand it, as a matter of book-keeping, but a method of test of a question.

Q. I would not take it that it would be adopted as a method of book-keeping at all, Mr. McPherson. I do not want my question to imply that.

Your attitude about the revenue theory is something like this, "with all her faults I love her still"; the best you can work out of it—is that it?

1234 A. It is the nearest truthful unit to use, in my opinion. It is the result of the operation.

Q. Any increase in state rates that were not followed by a corresponding increase in interstate rates necessarily increases the amount of expense which you apportioned to the State under this theory.

A. Well, I do not know about that. I suppose the same might be true of a decrease.

Now if a decrease had taken place from a base line, and there had

not been corresponding changes made in interstate rates at that time, then necessarily you would have decreased the amount chargeable to the State traffic; and the subsequent illustrations would be merely to restore the status that was originally disturbed.

Q. It would be an increase or decrease of the expenses apportioned to the State, depending upon the increase or decrease of rates, and not upon the actual increase or decrease in the operating expenses.

A. Yes. I do not think there would be any increase or decrease (I do not see how there could be) in the operating expenses. But for the purpose of illustration, the effect you mention would result; and in my illustration the same would be true.

Q. Now, take the actual conditions in Arkansas: you operated under a standard distance tariff and you obtained an injunction: then you increased the rates, say 42% subsequently Judge Trieber ordered a reduction of those rates to an increase of

1235 33-1/3 percent above the standard distance tariff.

At the termination of this law suit there will necessarily be a new tariff, either higher or lower than the present one, I presume, according to the result of the lawsuit.

Unless the interstate rates are fixed to correspond with these changes in the state rates the allotment of expense to Arkansas, under your revenue theory, would vary materially according to all of these changes in the actual condition of affairs, without any change in the actual cost of operation: isn't that a fact?

A. As a matter of fact the operating expenses chargeable to Arkansas in the books of the company would continue as they are now. The application of the theory would be, that there would be an increase.

As I said before, however, there is no calculation that can be made, unless you go back to your starting point, that would have very much accuracy.

If you go back to the starting point of 1900, when the rates were first changed, the change of those rates undoubtedly brought about a lowering of the interstate rates.

And it seems to me that it would be necessary, in order to prove this theory, or to even show the effect of it, to start at the original line and work it out to a conclusion before you would ascertain correctly whether the theory would increase the operating por-

1236 tion of the expense to the State.

Q. Well, if you take those actual facts: take those facts and apply them to the actual conditions down there. Mr. Flippen testified that the rates you put in force on November 2nd were much higher than the original rates, before the Commission had made any rates? So you had an increase there that would increase your expenditures, under your revenue theory of allotment, without any actual increase, and that would be an increase over the base line which you had established yourself.

A. If that is the case there would be an increase, provided that the interstate relation was as it existed at the time of the base line.

Q. And the interstate relation is a matter that the State cannot control and that the railroads control absolutely, subject to the

supervision of the Interstate Commerce Commission: isn't that a fact?

A. I think that is correctly stated.

Mr. MOORE:

Q. Do you know anything about that matter Mr. McPherson?

A. I do not know.

May I clear up one matter before we adjourn?

Mr. HILL: Yes.

A. I have wired our Superintendent at Van Buren for the actual engine movements between Van Buren and Greenwood Junction.

1237 He wires me that this average movement is 14 trains each way, making a total of 28 trains: and, in addition, an average of three switch movements each way, or a total of 6; making 34 engine movements daily between those points.

Mr. MOORE: How many trains?

A. Three in each direction.

Mr. HILL:

Q. What date was that, Mr. McPherson?

A. This telegram is dated today.

Q. I mean, that is the present situation?

A. Yes sir, this a normal situation at this time.

1238 ST. LOUIS, *December* 11, 1909.

Pursuant to adjournment, the following proceedings were had on Saturday, December 11, 1909, at ten o'clock a. m.

Present: Same parties as heretofore.

Cross-examination of Mr. MCPHERSON continued by Mr. Hill:

Q. Mr. McPherson, have you examined the hypothetical question I put to you, illustrating the freight movement of Missouri, Arkansas and Texas?

A. I have not had time yet to give it the consideration I would like to do before replying to it.

Q. You would like to pass that to a later time?

A. I would be glad to.

Q. I believe you stated in your direct examination that you estimated the extra cost of doing state passenger service, at thirty-five per cent: is that correct?

A. That is correct.

Q. As I understand your testimony given generally, you base that upon the same elements—in a large way, I mean—that you do the freight traffic, and that it reduces itself to the question of the haul and the two terminals?

A. To what?

Q. The difference in the haul and the difference in terminals, if I understood you correctly on that.

A. Yes, those are two elements. Then there is the ad-

1239 ditional energy required in making the frequent stops; the additional cost of accounting, and the larger cost for mainte-

nance of equipment that is incident to the strain on the equipment from the greater number of these stops and starts.

Q. How do you divide up these different elements on that thirty-five per cent; what per cent do you assign to the one of those factors, and what per cent do you assign to the others?

A. I did not proceed in that direction in my calculation. My opinion was formed by taking all of the elements together which I have named. The relation, generally, in exposure as to accident, exposure as to damage and in terminal uses, was as eight to one; the more frequent stops were seven to one. My conclusion was based on this analysis, together with my observation generally, in the years of experience that I have had, and I probably could not say offhand, all of the influences that led me to the conclusion; but they are such influences that the experience of any man would bring to bear in forming his judgment in any matter of concern.

Q. You keep statistics of the relative cost of the passenger and freight traffic, do you not?

A. Of traffic or expenses?

Q. I mean in regard to the cost of the traffic.

A. No, we don't keep statistics in that way, because the accounts are not kept in that way. We have, perhaps, some methods of roughly reaching conclusions in our own ways, which are in the nature of a more or less arbitrary calculation.

1240 The Interstate Commerce Commission's classification of the accounts does not provide for a separation of the operation, as between freight and passenger, so far as the expenses are concerned.

Q. But you do make up statistics on the cost of freight and passenger traffic, do you not, for the orderly conduct of your affairs?

A. I don't know of any statistics we have on the cost of passenger operation or on the cost of freight operation. We keep some statistics to test our efficiency of freight operation, but I am not acquainted with any on the efficiency of our passenger operation.

Q. Mr. McPherson, I want to read you from page 3675 of your Texas testimony:

"A. We cannot make any general hard and fast rule for determining just the proportion of passenger cost and of freight cost. We have to look into that as a separate factor. Our statisticians and auditors may make figures by taking them off. We examine each figure starting from two points of view; the train mile on the passenger and the ton mile on the freight business."

Is not that a fact?

A. Judge, I would like to go back to the beginning of that discussion, if they are to be introduced, because the preliminary of that makes a positive statement I have just made here.

Q. All right, go back just as far as you want to. I want

1241 to know if that is not a fact that you have stated in that part of your answer that I have read.

A. That starts with a question by Judge Cowan, page 3672:

"Q. What would be the difference in the moving expense of the passenger train and the freight train, going in the same direction?

A. I do not believe it is possible for an operating man to consider

the proposition from employing only one or two factors. We have to take the whole organization as it exists and bring into it all the elements that are in that as to the cost of moving traffic.

Q. You cannot answer the question?

A. Not attempting to answer it without taking in all the elements.

Q. Now, let us take in all the elements:

Take the aggregate of the total expenses, and under any form you have estimated it, state the relative cost of handling the two trains of the sort I have named.

A. For years we attempted to divide that on the basis of 25% and 75% of the total expenses of the railroad.

Opinions differed so widely on that, that we were obliged, for the purpose of reaching a conclusion, when it comes to adding to or diminishing our passenger service, to make up our statistics on some basis that is more or less reasonable.

1242 As to final results I do not suppose any two roads would agree, or that the conditions could possibly make them agree.

We try to make that division as near as we can. So far as accounting is concerned that is one thing; and so far as statistics are concerned that is another thing. I am concerned only in the statistical part of it.

After we have separated the expenses we know pertain to each class of service, and that can be pretty definitely furnished to us by our Auditing Department and our Car Accountant, then we make use of more or less arbitrary division of the unlocated part of that expense.

Now, to give a conclusion on that, I can only give my own experience and my own conclusion I have reached, considering the adding and diminishing number of passenger trains on a certain division, or on a certain part of the road. That we would in round numbers take the cost of running that passenger train on a train mileage basis.

With our freight trains we would go to the ton mile basis, and we would have two different elements there which it would be very hard to reconcile. We are working to two different things. We cannot work with both on the train mileage basis and get any result.

While a passenger train is uniformly made up of a locomotive and certain number of cars, a freight train may have any number of cars, and we must go to the tons.

In determining this question from an operating standpoint it would be different on one division on the road and on another.

1243 Q. Just at that point I want you to explain why that would be so.

A. It would be so from the passenger service on a branch line of road, say, a line with light tonnage would handle a small engine. The expense of maintenance of that engine and the fewer cars, the expense for fuel would be less than on the main line.

We cannot make any general hard and fast rule for determining just the proportion of passenger cost and of freight cost. We have to look into that as a separate factor. Our statisticians and auditors

may make figures by taking them off. We examine each figure starting from two points of view; the train mile on the passenger and the ton mile on the freight business.

Q. Bear in mind the important question that the two trains of the sort that are run, the passenger train and the freight train, to Texarkana, what is your ultimate conclusion with respect to the difference in cost of those two trains?

A. If we could take those two trains, the passenger train from St. Louis to Texarkana, and the freight train from St. Louis to Texarkana, we would have to take every expense incident not only to the running of those trains, but to the preparation of those trains to make the journey, and also the preparations that would necessarily have to be made in taking care of that traffic after it reached its destination.

1244 It would not be possible to get one or two of these figures unless we could merely say there is so much labor for the actual service of the train men; so much coal; so much oil, and so many supplies. That can be determined by actual test.

I may not be making myself exactly clear to you. I am in my own mind, but when we come to determining the question of expense in dollars and cents on everything, we have to depend on two units and we cannot express it in dollars and cents. Shall I read any more?

Mr. HILL:

Q. I want you to put in so much of your testimony as relates your views, and ask you if those are not the facts, as stated in the testimony which you have just read?

A. For the purpose that I have stated, for considering the adding or diminishing of passenger service, and for the purpose of reaching a rough estimate on that service, particularly as to branch lines, I will say that those are the facts. Those are the methods that would be employed by an operating man, to roughly reach a conclusion.

Q. When you made your estimate of thirty-five per cent extra cost of intrastate passenger service, you examined the figures as indicated here, prepared by your statisticians and auditors, and made that estimate on the train mile on passenger traffic?

1245 A. No; the particular elements that I brought to mind in this case were not for the purpose of determining whether or not we should take off passenger trains, or put on passenger trains. I looked generally into the operation of those trains relatively.

Whatever my testimony was in the Texas case would apply to all trains engaged in the passenger service.

My analysis in this case has been in the effort to make a distinction between passenger trains, those engaged in through service and those in local service.

Q. You base your opinion as to this thirty-five per cent extra cost of intrastate traffic upon the distinction then, between through and local trains, rather than upon the distinction of intrastate and interstate?

A. Yes; on the length of haul and the other elements that I testified to in my direct examination.

Q. It is the local train—passenger train, that you consider the short haul passenger, that you have been referring to?

A. Certainly, the intrastate passenger is the short haul passenger.

Q. There is no magic in the state line. It has no effect on the cost of the operation. It is in the difference of the service, as I understand it?

A. I have not considered state lines. I have considered the greater effort the Railway Company must make in the operation of
1246 these local passenger trains; the greater exposure as to injury; greater terminal cost, on the short haul traffic.

So far as the long or short haul is concerned, I would not apply it particularly to intrastate or interstate, but I would apply it between or right over state lines, so far as that is concerned? It is the length of haul. By the statistics that we have we know that the intrastate passenger rides on an average of but seventy miles, while the interstate passenger rides one hundred and eighteen miles.

If interstate passengers were riding less distance than the intrastate passengers, the results would be reversed.

It is a question of the length of haul, where it occurs, and in what kind of traffic it occurs.

Q. That same thing is true in the freight traffic, is it not?

A. I should say that as a general proposition it is. It is the length of haul that creates the terminal cost, and if the haul is shorter the terminal costs are more numerous.

Q. I understand; that is a repetition. But I mean as between the state and interstate there is no difference. It is the difference in the service you are rendering in the different classes of freight?

A. The difference is the length of haul; as a general proposition that is it, so far as the terminal cost is concerned?

Q. You have spoken of the increased casualties due to the
1247 short haul in passenger traffic; loss and damage to baggage, etc.

I am furnished with these figures of loss and damage in Arkansas, for the six months ending December 31, 1907, showing that it was $1,653.31. That is a very insignificant item, is it not, compared with your total operating cost?

A. We probably were very fortunate during that period and I am glad it is so small. I wish it was less.

Q. We are all glad of that.

Is not that a fairly representative period?

A. In casualties I don't know that we can say that any period is not representative.

Q. This loss in damage, $1,653.31, which I have just given you and which I understand is found in your Exhibit 3, is loss and damage to all your passenger baggage in the state, both interstate and intrastate. I ask you to look at Exhibit 3, and see if that is not correct.

A. I presume so; I did not make these figures. This is the part

of the business that belongs to the Accounting Department. However, as to the relation in that account——

Q. I presume that takes in all of the baggage damaged during that period?

Mr. MOORE: Look at your exhibit there, item 83, the "total" column and the "Arkansas" column.

A. I presume it did.

1248 Mr. MOORE: Judge Hill wants to get it right. There is the "total" and there (indicating) for "Arkansas."

A. I could not state positively, but I presume it represents all the damage to baggage during that period. However, as I stated before, that would be in the relation.

Q. Would be what?

A. Probably in the relation of eight to one as between state and interstate baggage, because the relation of exposures to that loss and damage would be of that ratio.

Q. I see on that particular item, that the percentage of loss and damage to baggage, assigned to Arkansas, is seventy-five; whereas the average percentage assigned to Arkansas under that heading, is fifty-four.

Do you know why there should be any greater losses and damage to baggage in Arkansas than the balance of the Missouri Pacific System?

A. The balance of the Iron Mountain, you mean?

Q. The balance of the Iron Mountain.

A. The average length of haul of the local passengers in Arkansas is very short, thirty miles; shorter than any other part of the road.

Q. Is it not about the same in Missouri?

A. Thirty miles? I think not.

Q. My recollection is (I am not at all certain, however) that it is within one or two miles practically the same——

A. On the Iron Mountain in Missouri?

1249 Q. That is my recollection. I don't know as a fact. I am asking you. (To Mr. Johnson:) Do you know, Mr. Johnson——

Mr. MCPHERSON:

A. I know that when I had occasion to look into the matter, that Arkansas average local haul was the shortest that we had on any of the states through which the System runs.

Q. This item to which your attention was called, and to which you referred yesterday in your direct examination, is really insignificant, is it not?

A. It is one of the contributing factors. What it is now, and what it may be ten years hence, I don't know; but it is a contributing factor in the expense, and in the future it will continue in that same relation. In some casualty it might be very many times that.

Q. Is it not a matter of fact that the intrastate passenger, with the

short haul of thirty-two miles, carries very much less baggage than your interstate passenger does with a much longer haul?

A. Passenger for passenger, that would undoubtedly be true, but there are so many more intrastate passengers that in the aggregate, the baggage hauled would be very much more in the local service than in the interstate service.

Q. It is a matter of common knowledge, that a man or woman making a trip of thirty miles would not carry as much
1250 baggage as when making a longer trip.

A. I believe that our heaviest baggage carrying train is a local train, Judge.

Q. You base that on the drummer proposition, don't you, that a drummer carries more baggage?

A. I don't base it altogether on the drummer. Anyone who will ride these local trains between Texarkana and Poplar Bluff, and between Hoxie and St. Louis—these trains that make the stops—and between Little Rock and Memphis, will be surprised to see the amount of baggage that is handled.

These trains make all the stops and the baggage that they carry is drummers' baggage, and bundles, and all varieties of belongings that possibly can be given to the Railway Company under the guise of baggage to carry.

I presume that that would not be disputed by anybody who has any acquaintance with the facts from observation.

Q. You don't mean that all these people that you see carrying that baggage on those trains are intrastate passengers, do you?

A. The intrastate passengers, as a general rule, ride on those trains. We have this sort of an arrangement in Arkansas, that intrastate passengers can take the local trains at their stations, in the event they want to make a long trip—an interstate trip—and ride on that local train to the place where the first through train going in that direction, stops. Then they can alight and take the through
1251 train. They are given a transfer check.

There is a very mistaken idea as to the baggage that passengers take with them. If one would take the whole trip under his observation, he would be in a very much better position to judge of that than merely to watch the loading and unloading of baggage at any one particular point. Now, passengers riding from points south of Little Rock, would naturally get off the train at Little Rock if they were going to St. Louis, and take the through train northbound. The local trains are fairly representative of local baggage.

Q. The item of drummers' trunks is a very considerable factor in that baggage proposition, is it not?

A. It is a considerable factor, yes.

Q. You carry the drummers for two cents, don't you?

A. I don't know what rate they charge them, but the drummer is looked upon as necessary to promote business, and purchases his transportation in large quantities. He rides probably two hundred times in the year, while the average passenger would ride once. He is a large contributor.

Q. It is a proposition of the wholesale and retail business, is it not?

A. I don't know that anybody is deprived from availing himself of the same privilege of buying a mileage ticket. I think everybody has the same right alike.

Q. Everybody don't have the same necessity for making
1252 those frequent trips, do they?

A. No, that is the point I mean. The drummer might ride 300 times in a year and might ride five times a day, while the ordinary individual don't find it necessary to travel so much.

Q. Well, that is the wholesale and retail principle applied to your passenger traffic, is it not?

A. No, I don't think that that is a fair comparison. A private individual probably would not go to a wholesale house and buy goods at jobbers' rates. It would be only the man engaged in the retail business who could do that; but any individual can go to the railroad and buy his transportation at the same rates as anybody else could.

Q. The reason you sell these mileage books cheaper is because the purchasers of them are buying in wholesale quantities, is it not?

A. I don't know the underlying theory of that, Judge. I never have given it any attention, but I presume there are reasons that justify that as it has been the practice for many years, and one that is approved by all the lawfully constituted bodies.

Q. Your statement—Exhibit 3, I believe it is—shows injuries to persons to be $90,470.89. How much of that is chargeable to the passenger business, what per cent is that of your passenger transportation expenses?

A. Why, I don't know. That is a matter that would not
1253 be known except to the accountants.

Q. A large part of your advertisement expense charged to the passenger traffic, is incurred in the procuring of interstate passengers, is it not?

A. Interstate passengers?

Q. Yes.

A. Oh yes, there is a considerable portion of that that is for interstate purposes.

Q. The advertising expense is hardly necessary for the intrastate passenger traffic?

A. Hardly necessary? Oh, yes, every passenger who travels on the road and wants to do so, can go into the station and get a folder. I have one here. That forms one of the large elements of cost.

Q. You furnish those folders to passengers alike, of course?

A. Any passenger can go and get one.

There is the advertising in the local papers, and there is the advertising for excursions and state fairs.

Q. But much the larger portion of that is incurred to obtain interstate passengers, is it not?

A. I don't know. I am not in the advertising line.

Q. But you estimate the difference in cost. Is not that a factor that enters into the situation?

A. I did not especially consider the advertising. M
1254 opinion was based more particularly on the physical cond
tions surrounding that business; those that come to th
operating man.

Q. The Pullman car is part of the physical condition, is it not?

A. Yes, Pullman cars form part of the units of the train.

Q. That is a heavy expense to you, is it not?

A. In what respect?

Q. An respect.

A. We don't have to maintain the Pullman cars; we do not hav to stand the depreciation of them, nor do we have to renew then We pay no mileage on them. They are furnished to the compan and all we have to do is to haul them over the road and keep the cleaned and oiled.

Q. Don't you have to pay the Pullman Company for them?

A. No.

Q. I would like to have your contract with the Pullman Com pany.

A. Is that because the statement is disputed? There are a goo many points in the Pullman contract that possibly would not appl to this particular question. I will give you a certified copy, hov ever, of that part that applies to that point.

Q. I think that any part that relates to the traffi
1255 would be proper for us to examine in this conne
tion.

As I understand it, your Pullmans are an expense to you and w cannot tell definitely about that unless we get your contract. The we can question you about it. I mean the contract that covers th period we are inquiring about, 1907.

A. I don't know just when the Pullman contract took effec Under the present Pullman contract we pay no mileage and nothin for the use of the cars.

I don't know whether there is any matter in that contract that of confidential character or not.

Mr. MOORE: I believe we can arrange that.

A. I cannot say whether the Company would be willing to pr sent it.

The MASTER: It is not a question for the Company.

The order of the court requires that it be submitted if necessar in the examination, but the secrecy and confidence of those book and accounts is protected by the order of the court, and all are pr hibited from giving out any information that is contained in then

Mr. MOORE: That will all be arranged.

Mr. HILL: I will not inquire further about that until I get th contract. I have several other questions, but I cannot ask the intelligently until I get the contract.

Q. Right in that connection, however, do you own your dinin cars?

A. Yes, we own all the dining cars, I think, that w
1256 operate now. I don't think we have any in service that w
do not own.

Q. I know some of the roads own them and some do not.

A. I think we own all of them that are now in service. Some of the café or buffet cars may be Pullman cars.

Q. I will just ask you to look into that and see whether your Pullman contract covers any of your dining cars, as well as sleeping cars, that are in use. Of course, if you have none in use, I don't care anything about that.

Is there any considerable difference in the cost of maintenance of way, between trains?

A. That is coming back to this Texas rate case. I believe I stated there that that was a refinement of analysis that in reality an engineer should pass upon.

Q. I notice in your Texas case, this testimony—page 3668; probably we had better go back to page 3667, the bottom of the page:

"Q. All items of labor cost on the train are substantially the same whether it is a heavy or a light train, if it is a through train?

A. That is for labor wages, yes."

A. That was the question of Judge Cowan that you read there first.

Q. I don't know who propounded the question. I just read the question.

Now, going on:

1257 "Q. The expense of hauling the weight of the locomotive, the tender and the caboose, is also a constant factor in every train, whatever expenditure of coal must be made for that.

A. That is true.

Q. The amount of wear and tear on the track is certainly very much more considerable from the locomotive than it is from the car.

A. From one car as a unit. The locomotive would cause greater wear than a car as a unit.

Q. And the difference would be mainly made up between the heavily and the lightly loaded train, in the difference in the fuel consumption, wouldn't it?

A. Well, there would be the general maintenance.

Q. The maintenance for the most part would not depend on whether there were ten trains or fifteen trains run per day over the road; or whether there were 10 or 15 heavy trains or light trains; the difference in the cost of maintenance would not be very great, would it?

A. Well, I do not suppose that would be of any considerable importance, no."

Then you take up further detail and explanation of that. That is a correct statement of the facts, is it not?

A. I am not challenging this record, but I don't quite understand that I made such a reply. That a larger number of trains would not make a higher cost of maintenance, that does not seem to be reasonable.

1258 Q. That is your testimony as you find it in your record of it?

A. That is exactly as I find it here, but there must have been some confusion of the question, for the reason that the amount of

traffic over a line does contribute to its maintenance; it is a factor.

That is difficult to explain; I don't know just how to explain it, but either I did not understand the question—because it is not an answer that any railroad man of any experience would have made to the question, exactly as it is put.

Q. Well, that is amplified somewhat, I believe; but then that is a matter of detail.

A. As I understand this question it was as to whether there were ten or fifteen heavy trains, or ten or fifteen light trains. As to whether that was ten or fifteen heavy trains, or ten or fifteen light trains, causing the difference, my answer would have been germane to that question.

Mr. MOORE: If you want to explain just what it is, just read the question and the answer into the record, if you wish to do it. If you think your answer was to the latter part of the question, you can so state.

A. The question was:

"Q. The maintenance for the most part would not depend on whether there were ten trains or fifteen trains run per day over the road; or whether there were 10 or 15 heavy trains
1259 or light trains; the difference in the cost of maintenance would not be very great, would it?"

Mr. HILL:

Q. Let me ask you where you are reading?

A. Page 3668.

Q. All right, go ahead.

A. "A. Well, I do not suppose that would be of any considerable importance, no."

Now, that question could only reasonably apply to the question of the ten or fifteen heavy trains or light trains, because I had previously stated that the wear and tear to the track was greater from one locomotive as a unit than from one car as a unit. It would be unreasonable to apply that answer to the early part of the question. It was the latter part of the question to which that is an answer.

Q. Well, suppose you read from your copy and see if it is correct—the balance of that page and 3669:

A. "Q. The ties mainly deteriorate and are destroyed and have to be renewed, on account of the wood rotting and the destruction of the wood for the most part, as I understood you to say yesterday.

A. Apart from the cutting of the ties by the weight on the rail.

Q. The cutting of the ties is a comparatively small percent of the destruction, compared to the destruction by natural decay?

A. That is due to the fact that the life of ties in that coun-
1260 try is short, say five or six years. If the life of the tie was longer that cutting itself would require them to be renewed on that main line.

Q. Maintenance of bridges, of which you have a great many, does not depend very much upon the volume of the traffic going over them; that is, the sort of bridges you now have, does it?

A. What kind of traffic, or the volume of it?
Q. The volume of it.
A. Oh, yes, that has a great deal to do with it.
Q. What is the principal item of cost of maintenance of bridges?
A. Well, with wooden trestles there is the constant renewal of parts and the necessity of daily supervision as to certain places and an examination of the general condition of the structure.
Q. That has to be done whether you run 15 trains or 20 trains a day?
A. Well, it is done as a matter of precaution"—(that is referring to supervision again)—"but with the heavier traffic there would be greater distribution of that over the traffic itself."
(That is distribution of cost over a greater volume of traffic.)
"Q. I understand that. But I am speaking about actually going to the expense of doing that. It would not depend on the number of trains. It must be done anyway.
A. We might run a train for two days over part of the line and the birdges might be examined both days."

1261 Mr. HILL:

Q. The maintenance of embankments is a large item of maintenance expense, is it not?
A. The maintenance of sub-grade, you mean?
Q. I mean the bank that your tie lies on. I don't know whether it is subgrade or supergrade.
A. That depends on the part of the country you are inquiring into.
Q. We are inquiring into Arkansas.
A. The maintenance of the embankments is a considerable factor wherever the railway is subject to overflow; where the ground is swamp; where the natural conditions are unfavorable to maintaining the embankment.
Q. Is not erosion by the elements responsible for a large portion of this expense?
A. Yes, there is a considerable portion of it that is in the way of wash-outs. There would be erosion caused by the elements.
Q. This erosion would take place whether you ran a single car or twenty-five cars over your track?
A. The erosion is not dependent on the volume of traffic. It is dependent on the elements. I would like to qualify that by saying that it would be possible that in a swampy country there would be a greater necessity of renewing the embankments, because of the heavy passenger traffic—and the greater cost, probably, attaching to it.

1262 Those questions cover such a range that one is liable to answer offhand without considering the several conditions that may at times apply.

Mr. HILL: (to Mr. Moore):

Until we get answers to the various matters called for, we want to stop at this point.

Mr. MOORE: Do you recall what those are?

Mr. HILL: This hypothetical question, and the express, mail and Pullman contract; that is all I remember.

1263 Cross-examination of Mr. McPherson, continued by Mr. Hill:

Q. Mr. McPherson, in the discussion this morning of the passenger traffic (which I sought to liken to a wholesale proposition) a matter was developed which I intended to ask you about:

Isn't it a fact that your facilities for handling the passenger traffic are practically fixed quantities, and an increase of that traffic would tend to cheapen the expenses: that is, until the traffic grows so great that the facilities would have to be increased?

A. The facilities for handling passenger traffic are more of a fixed character, or, at least, do not cover as wide a range as the facilities for freight traffic. The volume of traffic, however, makes necessary the enlargement of those facilities from time to time, just as the traffic is enlarged.

We have to build stations, and enlarge stations, every year; and we have to furnish additional office capacity, additional tracks, and other miscellaneous expenses, that are governed wholly by the volume of the traffic.

Q. Take this illustration: suppose your trains were running from Little Rock to Fort Smith fifty per cent empty, and, either by the reduction of the passenger rate or some cause, those trains were filled seventy-five per cent of their capacity, without an increase of
1264 train or station facilities, that twenty-five per cent increased volume of traffic would be largely if not all a net increase of revenue, wouldn't it—I mean net revenue. In other words, it would cheapen the cost?

A. Well, if it required no more men, no more cars and no more station facilities, then there would be the element of hazard, and the element of the baggage handling, yet to be considered.

Q. Aside from those considerations it would cheapen the cost about in proportion to the increase in volume, wouldn't it?

A. There is, of course, the element of accounting to add to that.

All the elements that pertain to dealing with a number of passengers would, of course, pertain to the increased volume of traffic. That increase of 25% might likewise require an increase in station facilities.

Q. Now, to reduce your proposition to a simpler basis, take it this way: suppose a train running over a given piece of road (say from Little Rock to Fort Smith) the more passengers per car you handle the cheaper per car it is to handle that traffic, isn't it?

A. No sir, not cheaper per car.

Q. Cheaper per passenger, I should have said.

A. Undoubtedly the volume would contribute to the lessening of the expense per passenger: that is to say, you would enlarge
1265 your devisor. That would be a mathematical problem.

Q. Do you know where your heaviest volume of passenger traffic is—that is, the heaviest of passengers per car—I don't know

what your technical term for that is: in other words, I mean where your cars are best filled; on what part of your line in Arkansas?

A. I do not know that it would be the same the year around. It would probably vary here and there. That is what I believe is termed the greatest density of passenger traffic.

Q. I don't know your technical terms, but the idea I am getting at is, where are your cars best filled: on what part of your line?

Mr. MOORE:

Q. Do you know about that, Mr. McPherson?

A. I don't think we have any statistics on that, and I would not be able to tell you.

Q. How does the filling of your Pullmans compare with the filling of your day coaches on the local trains?

A. The Pullman cars have a limited capacity. They are designed for long distance travel, and to afford sleeping accommodations to those travelers. They will not hold as many people as a coach will hold; but the people they do hold will travel the entire distance, usually, that they run—or a large part of it.

Now, then, to make a comparison between sleeping car travel and coach travel would mean you would also consider the miles, so
1266 many passengers per mile that the car travels.

Q. You have already explained that. Now I want you to explain the difference in volume between the two.

A. That would be the only way to ascertain it, to get the number of passengers per mile in the car.

Q. Have you any statistics on that subject?

A. I have not any statistics on that, Judge.

Q. Has your road any statistics on it?

A. No sir, I don't know that we have. We don't keep them in the operating department. Mr. Johnson might tell you if they keep them in the traffic department.

Q. Your road has a commissioner of statistics, hasn't it?

A. Well, I don't know. We keep our own statistics on operation in our own office, in the operating department. The statistics that are kept outside of the operating department I am not familiar with, except as I ask for them.

Q. Do you know what statistics your Commissioner of Statistics keeps?

A. I do not.

Q. Did you ever have occasion to call for his statistics?

A. He is not connected with the department with which I am concerned; and what his statistics are, or what his duties are, I am not familiar with.

Q. You know you have such an official?

A. Well, in a general way, yes; as anybody else knows a thing by common knowledge. But it is none of my business and I
1267 have not inquired into it.

Q. You have not availed yourself of any of his statistics?

A. No sir, I have never had occasion to call for them.

1268 Cross-examination of Mr. C. J. McPherson, continued by Mr. Hill.

Q. Mr. McPherson, are you ready to answer the hypothetical question I put to you?

A. The operating part of the proposition is based on obsolete methods of operation. It is not a practical or representative illustration of the movement of traffic.

I am not acquainted with the rates and divisions. If they are stated correctly, the result would be as shown in the illustration.

I have not said that the revenue basis was exact and it would be possible, I presume, for a person of ingenuity to pick out a dozen or maybe more, individual illustrations that would show inequalities in the revenue basis.

Q. Did you say it was obsolete? I did not quite catch your word.

A. Yes, an obsolete method of operation.

Q. Just what do you mean by that?

A. I mean that in the modern day methods of moving traffic that would not be representative.

Q. Describe in modern day methods, just how you would handle such a shipment as is instanced in the hypothetical
1269 question?

A. If for any reason a trans-state shipment should be loaded into a car containing the local shipment (and that would be unusual), the car would be re-worked at the first point where it went to the freight house, and the traffic put into the orderly course for movement.

Q. In that instance a trans-state shipment would get the use of your terminals within the state, would it not?

A. In this particular case that car would be re-worked at either De Soto or Poplar Bluff.

Q. It would get the use, then, of the Missouri terminals and not of the Arkansas?

A. In that case it would get a physical re-handling at Poplar Bluff.

Q. Then trans-state shipments do get the use of state terminals, do they not?

A. Not as you understand the terminal expense. It would not get a re-billing or re-weighing or re-accounting. It would be merely a physical transfer to bring about an efficient and economical handling of the traffic.

Q. There would be a casualty risk to that re-handling would there not?

A. Oh, yes, there is a casualty risk for every re-handling that of breakage.

Q. The physical re-handling of it would be the heavy end
1270 of expense, rather than the accounting?

A. Not necessarily, Judge.

Q. Would it not, naturally?

A. No, the original preparation of that general less than carload traffic for movement would be the heaviest terminal cost.

Q. I understand, but I am speaking as between accounting handling and the physical handling at the two terminal points?

A. Why, yes, the physical re-handling.

Q. At Poplar Bluff?

A. Yes, but it would be a very unusual movement. I could not conceive that any such movement of traffic would be made.

Q. Mr. McPherson, Mr. Flippen has testified that prior to the tariff put in by the railroads, on November 2, that there had been an inordinately low interstate rate from Memphis to Arkansas points. I assume that to be the truth.

I will ask you if that fact would not, under the revenue theory, make the proportion of the expense charged to Arkansas greater than it should be, just in proportion as the Memphis interstate rates were inordinately low?

A. I could not answer that question without a knowledge of what the two rates were, which I don't possess.

Q. Well, I am assuming that Mr. Flippen has correctly stated the facts. His expression was that the rates from Memphis to

1271 Arkansas points (interstate rates) were inordinately low. Assuming that to be true, would it not follow that if the interstate rates were inordinately low, with as large a volume of traffic as moves from Memphis to Arkansas, that you would have a wrong proportion when you take revenue theory to apportion your intrastate expenses?

A. I would have to know what the interstate rates were and what the intrastate rates were. The intrastate rates might, under that statement made by Mr. Flippen, be still lower than the interstate rates; that I don't know.

Q. Well, as a matter of fact if they were not, I don't suppose it would be contended that they were.

A. However, as far as the actual expenses of operation are concerned, that would not cut a figure. That would only be used in an illustration in a cause like this.

Q. I am talking about dividing your expenses between state and interstate; in your exhibits here (that were made up while this inordinately low interstate rate prevailed), would not that necessarily make the proportion charged to Arkansas wrong—interstate traffic, I am referring to?

A. As I said before, Judge, I cannot answer. I don't know whether that question applied to the rates from Memphis proper, to Arkansas points, or whether it applied on business coming through Memphis to points in Arkansas.

I don't understand that it would have any effect on the revenue basis of apportioning the expense.

1272 Q. Why would it not?

A. As a probably exact relation does not exist between in trastate and interstate rates in every instance, and it would be difficult to say just what the exact relation should be. There is undoubtedly a relation, but it would be hard to define just what it is.

The prevailing condition for a short time may have disturbed the relation; that would not be illustrative of or affect the general revenue basis proposition; it would merely throw it out of line

temporarily, so long as there was not a proper relation, whatever that might be.

Q. It seems that this relation, temporary or permanent, between the interstate rates from Memphis to Arkansas, prevailed during the period that your exhibits cover: what would you say to its effect, then, upon your case as made in your own exhibits?

A. I would say that whatever the relation was, there might be a difference just as much the other way, in the relation between interstate and intrastate rates, somewhere else.

Q. We are not discussing that. You have not given us any illustration of it, and I am giving——

A. (Continuing:) —in consequence of which I doubt very much if we could segregate one illustration and make it of any value in determining or in questioning the averaging of the revenue basis.

Q. Is not the traffic from Memphis into Arkansas a very heavy traffic?

1273 A. It is undoubtedly a heavy traffic.

Q. Is it not of such a volume that it would necessarily affect the relation between the intrastate and interstate business?

A. I have not figured it out: I don't think it would, materially.

Q. If those were inordinately low rates you don't think it would materially affect the relation in expense, between the state and interstate?

A. It might be a circumstance that would disturb the relation for the time being, as I said before, in the general average. It is doubtful to my mind if it would cut any considerable figure.

Q. Well, during the time that that relation is disturbed?

A. I would say again that the revenue basis is not perfect. It is open to illustrations that would demonstrate that, but whatever the relations might be between state and interstate traffic rates, so far as my judgment is concerned, it would average up well, taking the whole into consideration, in its entirety.

Q. It levels up many inequalities, does it not?

A. It does, in my judgment.

Q. The ton mile theory levels up many inequalities, as I understand from your testimony?

A. The ton mile theory, as I have illustrated in my testimony, does not consider any difference in the character of traffic: it disregards the character of traffic and it disregards the rates

1274 on the traffic that are established, more or less, because of the character of the traffic.

Q. It seems that in these various illustrations that you have taken, that your revenue theory disregards both rates and cost: is not that a fact?

A. No, the revenue basis is the result of the operation. It is the revenue that is received from the traffic, intrastate and interstate. It is not the progress of it, but the result.

Q. But we are trying to divide now the cost of the result, between the interstate and intrastate, and these various inequalities that you have admitted go both to cost of service and to rates.

A. We have the result. We know what the result is in the earnings of interstate and the result of the earnings of intrastate, and I know of no way that would be better to follow in apportioning the cost than to take the results accomplished.

Q. Well, the practical effect of your revenue theory is, that the higher you make these state rates (unless you make a change in the interstate rates), the higher you make the proportion of expenses charged to the intrastate traffic, is it not?

A. In the book-keeping of the railroad that would not be true. The increase of rates does not increase expenses; expenses remain the same.

1275 Q. Do you think that is an answer to my question?

A. I have not completed it.

Q. Excuse me; go on.

A. For the purpose of illustration, as in this case, if the rates were made higher in Arkansas, yielding a larger revenue, then the apportionment on a revenue basis would be greater, but to fully consider your question would necessitate going back to the time that the relation between interstate and intrastate rates was first established.

I don't understand the traffic proposition well enough to say what the relation between intrastate and interstate rates is.

Q. Is not that a necessary factor in the development of your revenue theory?

A. Not necessarily, no. I must assume that it exists. I believe that it is generally assumed that it exists. If the state rates for any reason are lowered, the interstate rates are lowered, and that relation would doubtless continue under such circumstances. If the state rates are raised, I presume that the relation is still continued by a raise in the interstate rates.

Q. You interstate rates on the Iron Mountain, Missouri Pacific, and other railroads operating in the southwest, are a fixed quantity, are they not?

A. I don't know. I should say not. They are continually disturbing them by rulings of the Commission, by orders of various sorts, and I suppose, from the necessity of adjusting them

1276 because of the changes in state rates, but I know that only in a general way as every other person does who reads, and is not a great expert.

Q. Every time one of those rates is changed, then, it readjusts the relation between state and interstate, does it not, under your revenue theory of apportioning expenses?

A. Yes, but I would not regard that as of any consequence; it would probably be a negligible change.

Q. What establishes the relation between state and interstate rates?

A. I don't know.

Q. As a matter of fact, is there any fixed relation between them?

A. Well, that would have to be hearsay if I answered that question—it is not my own knowledge.

Q. Do not commercial conditions largely determine the interstate rates?

A. I have always understood, Judge, that commercial conditions govern not only interstate, but state rates, to a certain extent.

Q. But in determining the relation between them, do not commercial conditions enter into it?

A. All the conditions that would enter into rate-making at all, would apply alike to state and interstate rates.

Q. Suppose the interstate rates on the Iron Mountain were fixed for six months that would control both interstate move-
1277 ments in Arkansas and Missouri: whichever state gave you the most revenue—that is, the higher rates—that state would be charged with a greater proportion of intrastate expense?

A. I don't believe I got that.

(Question read.)

A. I don't know that I understand that question.

Q. I am assuming, of course, in this question, the same cost of service in both states.

A. I do not grasp it, even on the second reading.

Q. Well, take in this hypothetical question that you have studied over, and the illustration of Missouri fourth class rate, 24c. per hundred pounds; Arkansas fourth class rate, 32c., for the same distance. The fourth class rate for that same commodity, on the Iron Mountain, in the interstate traffic, is fixed and is the same in either state——

A. And that would embrace the trans-state.

Q. Possibly; leave out the trans-state for the purpose of this question. Now, owing to the fact that Arkansas gives you a better rate than Missouri does, Arkansas is charged with a greater proportion of the expense of moving that traffic, is it not?

A. Of the interstate traffic?

Q. No sir, the intrastate traffic.

Mr. MOORE: Do you mean the intrastate traffic in Missouri?

Mr. HILL: No sir, in Arkansas.

1278 Mr. MOORE: You must remember those are divided.

Mr. HILL: I understand.

(The WITNESS:)

A. I don't see how that would affect the revenue basis. The interstate traffic stands for itself in the division, and the intrastate traffic stands by itself in any state. There might be apparent differences, unless the rates were made exactly the same, all over the United States, and that would not be feasible because of the different conditions. It is cheaper, perhaps, to operate in one state that another. What would be reasonable rates in one state would be confiscatory in another. I don't see how it affects the revenue basis of division. The division that is made on the revenue basis, for illustrative purposes, does not affect the cost of handling the traffic.

Q. I will put this question to you in this way:

Assuming the interstate rates are unchanged, and are the same in both Arkansas and Missouri, for six months; that the cost of the

intrastate service is the same in Arkansas and Missouri. If the Arkansas intrastate freight rates are higher than those of Missouri, is it not true that under the revenue theory it increases the amount of expense apportioned to Arkansas to the relief of the interstate cost of service?

A. I would like to have that question written out, if I might.

Q. You say you want time on that?

A. No, I just want it written out, so I can have my eye as well as my ear to guide me.

1279 (The question is written out by the reporter and handed to the witness.)

A. In answer to this question I would say that a good many things here are assumed, that I don't understand anything about—the rates being the same in interstate traffic in Arkansas and Missouri, and whether those rates would continue for any fixed period. I don't see how this would affect the revenue basis of apportioning the expense, even if the assumption was correct that the interstate rates are the same in both Arkansas and Missouri. The revenue basis must necessarily give and take, in a great many ways, and no doubt illustrations could be multiplied showing where inequalities really would exist under the revenue basis of dividing expenses.

Q. Under your illustration of giving and taking, it gives unto the state which has low rates, and takes from the state which has high rates, does it not?

A. That is hardly a fair construction to put on my answer. My answer was giving and taking in all directions—for instance, interstate traffic contributes so materially to decreasing the expense of all traffic because of its large volume over which the overhead expense of railway operation is distributed.

Q. The practical effect, Mr. McPherson, as I understand it in your explanation of it, would be that it would give unto the state that has a high intrastate freight rate, an added cost, relatively,

1280 and it would take from the state that has a low intrastate freight rate the cost of operation, relatively, as between interstate and intrastate?

A. That was not my answer and that is not my understanding.

Q. Won't it operate to the disadvantage of Arkansas traffic in the cost of expenses—that is, the higher rate in Arkansas, over the lower rate of Missouri, in apportioning it on the revenue theory?

A. The cost of operation is greater in Arkansas than it is in Missouri. The cost of maintenance is much greater. I don't see why that should not be the case, even though the conclusion was made,—from the conclusion in your illustration.

Q. Do you want to admit that that is true, and then account for it on the different cost of operation in Arkansas?

A. I don't admit that it is true, but I said that even if it was true, the fact that it costs more for maintenance in Arkansas than it does in Missouri, relatively, might have some influence in the higher rates; that is all.

Q. You have a denser volume of traffic in Arkansas than you have in Missouri, have you not?

A. I will see if I have any statistics on that. (Making search among papers accordingly.)

That heavy density of traffic is contributed by the heavy trans-state business through Arkansas—(I don't know just the figures, I haven't got them with me at this time), and that is the contribution of which I spoke; that is the overhead expense of operation——

1281 Q. Did you not testify there were very steep grades from Poplar Bluff north, on the main line—from Piedmont north, that made the cost of operation of that division very heavy?

A. Yes, we have grades there that are higher than the average grades in Arkansas; parts of the Memphis division, and on the White River division.

Q. But on your main line you can handle your traffic cheaper in Arkansas than you can in Missouri?

A. No, because of the fact that we have a low grade line and substantially the same grade line, from Texarkana to St. Louis.

Q. That is, by taking the Illinois division?

A. Yes, that is the line that takes the trans-state.

Q. I was asking about your main line: you can handle that cheaper in Arkansas than you can in Missouri, can you not?

A. Well, we can take parts of the road and handle the traffic cheaper than we can on other parts; that is to say, we can get a greater efficiency from our engines.

Q. Can you not handle the traffic from Texarkana to Poplar Bluff, cheaper than from Poplar Bluff to St. Louis?

A. We might——

Q. Don't you, as a fact——

A. (Continuing:) —on the low grade line, be obliged to add the difference in the cost of moving the traffic that was bound

1282 for St. Louis, over the river. As against that, we would have to put the transfer of the traffic that came up the main line, across the river. The traffic that is handled over the main line in Missouri, is done so with less efficiency than on the line from the Arkansas state line to Texarkana.

Q. Is not the Iron Mountain road the best road west of the Mississippi River?

A. Those who are connected with it think it is, yes, sir.

Q. You are one of those?

A. I believe I am on the record.

Q. Mr. McPherson, here is a quotation I have taken from your testimony; see if it is correct.

"In my opinion, from a practical standpoint, the cost of handling intrastate passenger traffic exceeds that of handling interstate passenger traffic about thirty-five per cent." That is correct, is it?

A. That is correct.

Q. I want to call your attention to the affidavit made by you.

which was used before Judge Vandevanter, when the preliminary injunction in this case was granted—a paragraph of it.

(To Mr. Moore:) That is a copy that was furnished us, Mr. Moore; it is not the original.

Mr. MOORE: That is all right.

A. This affidavit was made in a general way, of my views
1283 of the operation, as a general proposition. Since making this affidavit, I have given it a good deal of study and I have increased my conclusion in this respect, at least ten per cent, as the result of that study.

Mr. HILL:

Q. Read that clause (indicating) into the record, please.

A. "I have no hesitancy in saying that it cost from four to five times as much to conduct intrastate freight business on the St. Louis, Iron Mountain & Southern Railway, in the state of Arkansas, as it does interstate business, on a basis of tonnage carried, as the cost of transporting local passengers between stations within the state is from twenty to twenty-five per cent greater than the cost of transporting interstate passengers."

Q. You were testifying then to the same period that you are testifying to now, were you not?

A. Yes, at any period; the period would not effect the cost.

Q. You had the statistics for this six months period before you then as you have them before you now, did you not?

A. No, I had not. I had before me at the time that was made, only my general knowledge of operating conditions.

Q. I believe you stated that you make up this opinion from thirty-one years' experience as a practical operating man?

A. I want the whole average, Judge; it is thirty-two years.

1284 Q. Well, up to thirty-one years, then, you thought it was twenty to twenty-five per cent, and in the last year you have raised it ten per cent; is not that a fact?

A. Well, Arkansas is somewhat peculiar in respect to the intrastate and interstate traffic.

One speaks generally, at the time, of a matter that he knows exists, and, on giving it further study he may modify that opinion because of some peculiar condition existing in one particular state.

The long and short haul expense would affect state traffic just as much as it does interstate, and the average length of the intrastate passenger haul in Arkansas is very short.

Q. Mr. McPherson, going to your express contracts that we called for, there are only certain portions of it that I desire to place in the record: (Reading from contract.)

"Settlements shall be made monthly and the party of the first part shall be entitled to receive fifty per cent of the total gross earnings of the party of the second part on the line of said first party's railway."

That is your contract with the Pacific Express Company, is it not?

A. That is the printed contract?

Q. Yes.

A. I believe that is correct; I don't go into that feature of the business myself.

Q. Here is another clause from the printed contract that I want to read:

1285 "The said second party, in consideration of this contract and the rights and privileges accorded by it, agrees to give to said party of the first part $2,400,000 of its capital stock, and the aggregate of capital stock, of the second party, shall not be increased above $6,000,000, without the consent of the first party."

Are you familiar with that?

A. No, that part of it I don't know anything about, Judge. Whatever it states there——

Q. Here is the contract (handing witness paper); see if that is correct.

A. I assume that you have read it correctly; that would be the only point.

Q. Then it appears, under this contract, that you get fifty per cent of the gross earnings of the Pacific Express Company, and that you would be owner of about forty per cent of its stock, in consideration of getting the contract?

A. I think that is wrongly stated.

Q. I did not mean to say fifty per cent of the gross earnings of the Pacific Express Company, but on your line?

A. Of the earnings on our line?

Q. Yes, I left out that; forty per cent of the entire stock, which would represent net earnings, I suppose, if it makes any net earnings?

A. I don't know anything about that feature of it. I don't know whether that is ever carried out or not.

Q. Do you know whether you are getting any dividends

1286 from that stock?

A. I don't know; not to my knowledge. That would be a matter for the Executive and the accounting department. It would not come into my department.

Q. (To Mr. Johnson): Do you know about that?

A. I don't know, Judge, whether we get any dividends from the Pacific Express Company or not, as a matter of record.

Q. You know you own that stock?

A. No, I don't know that, either; that contract evidently says we do.

Q. Is it shown on your books in any way?

A. It would be shown if we owned the stock.

Q. Has a dividend or income in any way, from the Pacific Express Company, gone into your accounts here?

A. The earnings from the express business have gone in there in the shape of "miscellaneous earnings."

Q. That is, under your gross fifty per cent on the line—what I am getting at is this: has any revenue under that stock holding, gone into your revenue?

A. No portion of the dividends of the Pacific Express Company went in there, that I know of.

Q. Well, I want to know about that. I don't know who the proper officer is to trace it up but I call on you, Mr. Moore, or Mr. Johnson, or Mr. Schuyler, or whoever is the proper one, to find out where that stock is.

(To Mr. Moore):

I have not had time to look at your Pullman con-
1287 tract. I think we can agree on a statement of what is material in regard to the Pullman's without putting all the contract in evidence.

I have these mail contracts and as soon as we look over them, I want to go into them.

That is all, with that exception.

Redirect examination.

By Mr. MOORE:

Q. Mr. McPherson, did you have the statistical figures before you, which you now have, at the time you made the affidavit to which your attention was called by Judge Hill, a moment ago?

A. No, I did not.

Q. Had you made as full an investigation in regard to the conditions upon which you based your testimony, as to the difference in the cost of conducting state and interstate business, both passenger and freight, at that time as you have now?

A. In a general way, applying it to all of my experience in various parts of the country, yes; but applying it particularly to Arkansas, no. Undoubtedly a man modifies his conclusions somewhat after giving any particular matter close and careful study, with the statistics before him.

Q. Did you know, for instance, at the time you made the affidavit, the length of haul of an interstate haul, as compared with the length of haul of an intrastate haul, in the state of Arkansas?

1288 A. I did not.

Q. Judge Hill asked you a while ago, what relation existed between state and interstate rates: is not the cost of the service the fundamental underlying principle upon which rates are fixed, and compelled to be fixed by railroads, and is that not the main thread of relation that exists between the rates, in the two classes of traffic? In other words, are not the rates primarily fixed with regard to the cost of conducting the business?

A. They must have that in view.

Q. Could a railroad, any more than any other industrial concern, do business unless it fixed the price for that which it had to sell, with reference to the cost of production?

A. It must keep that in view.

Q. Is it not true that the great fundamental chain, or relation that exists between rates, is based upon cost of the service?

Mr. HILL: Mr. Moore, Mr. McPherson objected to answering my questions, as a rate man, and said he was not a rate expert.

Mr. MOORE: I am speaking now just as a business man, and any man, I think, can answer that question in a way.

A. I was going to say, Judge, that I am not an expert rate man. My knowledge of rates is such a knowledge as a husband, perhaps, would have of the cooking in the house. He is not himself a cook, but he knows something about it, because he has seen it done——

Q. And enjoyed the fruits of it?

A. And has enjoyed the fruits of it.

1289 Q. Your attention was called to a statement which counsel assumed Mr. Flippen made, that the interstate rates (in reference to the state of Arkansas), are inordinately low: if that were true, and it were further true that the intrastate rates in the state of Arkansas, at the same time, were also inordinately low, would the low interstate rates affect the relation as between the two kinds of traffic? In other words, would they or would they not be upon the same basis as to the degree of the rates?

A. I believe I answered Judge Hill that I would have to know the rates and conditions, which I did not know. It would be true, if the conditions were disturbed all around, there would be only one answer to that question.

Q. What would that answer be?

A. If the conditions were disturbed all around, the revenue basis would be the only basis that we could look to for any hopeful solution of dividing the expense between intrastate and interstate operation.

Q. Would the fact that both classes of rates, state and interstate, were inordinately low, affect the relation for the purpose of dividing the cost upon revenue basis, any more than if they were both inordinately high?

A. No, I don't think that it would.

Mr. HILL: Would not that depend on the degree of inordination?

Mr. MOORE: It is a degree of co-ordination, I believe, Judge.

1290 Q. Referring to the hypothetical question propounded to you by Judge Hill, and which you answered this morning, relating to the shipment of a ton of trans-state freight from Carondelet, south, and with it a ton of local freight: you stated a while ago that under a condition of that sort you would re-work—I don't know whether you said the car or the——

A. The car.

Q. —car, at the destination of the local shipment: state a little more fully what you mean by "re-work." What would you do?

A. Well, if by any accident, those two shipments should have gotten into the same car at Carondelet and the car was taken out by a local freight train, by the time it got to Poplar Bluff it would either be made an empty car for delivery somewhere, by the transfer of that ton of freight into some other car; there are certain points on the railroad beyond which those small jags of freight do not go, under any circumstances; they are often transferred right at the

local station; sometimes they would not go ten miles before the car would be empty, and the freight loaded into a car that contained the same character of freight, for relatively the same distance, if they had such a car in the train.

Q. Are you speaking now of trans-state freight?

A. Trans-state or interstate, yes.

Q. Under your method of operation now and in 1907, is such condition as is assumed in the hypothetical question, liable to
1291 exist: that is to say, where there is a ton of trans-state freight and a ton of local freight from Carondelet, to a point 100 miles below, loaded into the same car?

A. No, such a condition as that has not existed for years on any well managed railroad.

Q. Suppose, instead of illustrating by a ton of freight, you have a trans-state train made up of forty cars, and you attach to that train one car containing local freight, to go to the point 100 miles below Carondelet, mentioned: what would be done when you reached the destination of the local freight?

A. The car would be set off.

Q. What would be necessary to set that car off?

A. It would require switching.

Q. There would be an expense incident to that switching?

A. Yes.

Q. Would that expense accrue from the trans-state shipment, or from the intrastate shipment?

A. From the intrastate shipment.

Q. An illustration was given you of an instance in which a higher intrastate rate was assumed to exist in Missouri than Arkansas, and you were asked if that were the case, and you should apportion the expense of state and interstate business upon the revenue basis, if you would not assign a larger share or portion of the expense, to intrastate in Arkansas than you would in Mis-
1292 souri: I want to ask you in connection with that proposition, if the rates are not adjusted (so far as the railroad company has power to adjust them), with reference to the local conditions which enter into and govern the cost of the service?

A. Well, I am not a rate expert, but in connection with the traffic department I have frequently urged that in some cases, where a rate had gotten (in my opinion) too low for the operating condition that prevailed, that the rate be raised.

Q. I will ask you if the cost of operation is uniform throughout the different territory traveled by the Iron Mountain Railroad?

A. No.

Q. How does the cost of the maintenance of way, for instance, compare in Arkansas and Missouri?

A. Well, it is much higher in Arkansas, for the reason that it is a more swampy country, and we have a much greater amount of bridging and waterways—the natural conditions of the country.

Q. You have testified to an extra cost, of five to one, with reference to the quantity of matter handled in conducting intrastate freight traffic transportation, above interstate: the statistics contained

in Exhibit 5, filed in this case, shows that the percentage of revenue from interstate is 13.41%; that the percentage of total ton miles is 7.25.

Suppose the revenue per ton mile, instead of being 13.41 was 26.82, growing out of a higher local rate.

1293 You would then assume that instead of five times the extra cost on the basis of quantity being two or two and one-half times as much on a revenue basis, if it was represented by a different figure, would you?

In other words, what I want to ask you is this:

Whether the relation of the tonnage to the revenue cuts any figure in determining the extra cost; whether the extra cost is not finally determined—by your judgment as an operating man—as to the conditions applying to each one, and that the basis upon which you make your statement that 2½ to one, on a revenue theory, grows out of the fact that the statistics in this case show that five to one of extra cost is equivalent, (stated with reference to the revenue basis) to the figure that you gave, of 2 or 2½ to one?

A. Yes, it so happened that the intrastate proportion of revenue per ton, per mile, was double that of the interstate, and on the basis of ton miles, I figured that in my judgment, the cost was at least five times as great in the intrastate traffic as in the interstate traffic. That naturally brings into one's mind the relation as to the average revenue per ton, per mile, which, being double in the intrastate than in the interstate, would be somewhere in the vicinity of 2½ times as great.

Q. Supposing the rates in Missouri were so adjusted that in that state the percentage of total ton miles was 13.41, the same, and the percentage of revenue the same: you would have in that case

1294 (in speaking of the difference upon the basis, or with reference to the revenue theory), to set a different ratio than you would in the state of Arkansas, would you not?

A. Yes, if they were different.

Q. That is what I mean; but would that affect the proposition that, in your judgment, it cost five to one to handle the intrastate business, speaking with reference to the quantity of the business?

A. No.

Q. Is there any distinction in the use of cars in the service of the St. Louis, Iron Mountain, or any other interstate railroad, as between the interstate and intrastate service?

A. No, the cars are likely to be in both kinds of service any day, or in intrastate one day and interstate the next. They are used in common, liable to be drafted for the purpose of either, or both, at any time.

Q. That fact requires you to comply with the provisions of the Act of Congress with reference to safety appliances, as to all your cars, does it not; those engaged in intrastate as well as those engaged in interstate?

A. Yes, all of the cars, because they must all be available for instant service.

Q. Is it then proper to charge that as an expense of intrastate, as well as interstate traffic?

A. That is, the maintenance of that equipment?

Q. Yes.

1295 A. Yes, it is a charge against all of the traffic.

Q. The benefit of the improvement that is made under the Act of Congress inures, does it not, equally to the benefit of intrastate as well as interstate traffic?

A. Yes, it increases the efficiency of operation, and that would apply to the handling of all traffic that the Railway Company moves.

Q. Now, referring to the Act of Congress limiting the hours of service of certain employés, including telegraph operators; do the same employés discharge duties with regard to both kinds of traffic?

A. Yes, the duties of all of them are incident to all of the traffic which the Railway Company handles.

Q. Does that Act, then, affect the expenses of intrastate as well as interstate traffic?

A. Why, yes, because it applies to all of the traffic that the Railway Company handles. An operator may be located at any local point in Arkansas and be subject to the same conditions as an operator located at Little Rock.

Q. How does your trans-state traffic compare, in volume and in bulk or masses in which it is carried, with interstate traffic that begins or ends in the state, and with intrastate traffic?

A. The trans-state traffic is the heaviest average loading per loaded car mile, that any railway handles; not only this road, but any other (except, perhaps, some of the coal carrying roads

1296 that handle nothing else); and the reason for that, Judge, is this: the business is largely an export business, and the units are crowded to their capacity because when they reach their destination they are loaded on to a ship that contains what a great many of these units would bring to it, and the traffic in the reverse direction is the same; it is going to markets, where it goes in large quantities, and is not merely for local distribution between the towns or cities in a particular state; it goes for concentration, and in consequence of that, the trans-state traffic is loaded, as a general rule, to the full capacity of the car.

Q. Then how is it with regard to the efficiency of your engines in trans-state traffic, as compared with the other two kinds mentioned in my question?

A. A good deal of this traffic, during the season of grain export, was moved in solid train loads, right through; that would be done to prevent its being scattered; to get it hauled through to its destination together, and prevent a delay of the ocean going vessel that would take it away.

Q. Out of which class of traffic do you get the largest potential capacity of your engines and cars?

A. We would get the largest potential capacity of our locomotives from the trans-state traffic, because of the fact that they are loaded to their capacity.

Q. Taking the trans-state traffic as a whole, in its entirety, how does the cost of handling that particular line of traffic compare with the intrastate traffic, and the interstate traffic that begins or ends in the state?

1297 A. It is less, because it has no terminal charges, and has greater efficiency of operation in connection with it.

Q. Your attention was called to the manner of handling trans-state cars at Texarkana: what is the difference in the manner of handling that class of cars in the yards and of ordinary terminal handling?

A. This trans-state traffic would only have to be set on a receiving track and the caboose attached: if there was not sufficient for a train, additional cars would have to be added to that, or would be added to that number, to make a full train. In the general switching in the yard, the interstate and state cars are gathered together from industries and mills, house tracks, etc., requiring a number of switching movements to get together those cars; while but one movement would be necessary in the classification yard with the trans-state freight.

In this particular case I testified that, even assuming that any charge at all for work in the classification yards was chargeable to that traffic, that fifteen per cent would be a large proportion, and such for instance as was referred to, at Texarkana, would some within that fifteen per cent.

Q. The service that you render there is what you call "yard" service, in your testimony?

A. It is what we call service in the classification yards, yes.

Q. In speaking of the expense assignable to different

1298 kinds of traffic, in your direct examination, I think you said you would assign to the trans-state traffic fifteen per cent of the expense of yard service: I am correct in that, am I?

A. I said I did not believe it would be equitable to charge any part of the yard service to trans-state traffic; but, assuming that the physical handling given it should be a charge to the trans-state traffic, then fifteen per cent would be a large allotment.

Q. In illustration of the elements entering into and constituting cost of the different kinds of traffic, and showing the relation of cost as between them, you stated that you assigned fifteen per cent to trans-state traffic on account of yard service?

A. Yes.

Q. I understand you now, that the kind of service that is referred to at Texarkana, and similar yards, is the yard service, to which that assignment applies?

A. Yes.

Q. In your judgment, is that fifteen per cent a full and adequate allowance for that purpose?

A. It is an excessive allowance, however, if I should have reached it in any other way than I explained in my direct testimony; it would have been said, perhaps, to have been intuition, rather than synthesis.

Q. State again how you did reach it in your direct testimony.

1299 A. I took the entire number of engines working in the yards in Arkansas; then I took the number of hours that we ascertained by actual test, that those engines worked in the classification yard, and the number of hours that they worked in other yard service. I reduced the proportion of engines working in classified service, by thirty-five per cent, to provide for the switching of empty cars, and assigned 51.16 per cent of the balance to trans-state, as that was the proportion of all of the tonnage touching Arkansas during that period.

Q. Trans-state tonnage, you mean?

A. Trans-state: that is, 51.16 per cent of all tonnage was trans-state. Now, I believe that is too much; it is more than I would use under any other circumstances than this.

Q. If you were dividing that expense for operating purposes, would you make such a large allowance?

A. I would not divide it for operating purposes, in the accounts, but sometimes, for the purpose of running down some particular thing, we go to considerable trouble in analyzing a matter, as to whether we will continue to do a thing or whether we will stop doing a thing, and if I were analyzing this case on that basis, I would not assign as much as fifteen per cent.

1300 Redirect examination of Mr. C. J. McPherson continued.

By Mr. Moore:

Q. Exhibit five shows that the average length of a journey for an intrastate passenger is 30 miles and for an interstate 118 miles: does that interstate journey include trans-state as well as other interstate traffic?

A. Yes, sir, that would include the trans-state.

Q. It shows that the average length of the haul of freight traffic is, intrastate 70 miles and interstate 224 miles: does that interstate also include trans-state?

A. It includes the trans-state in Arkansas only.

Q. Do those statistics include any mileage outside of the state of Arkansas?

A. No, sir.

Q. What is the average length of haul of trans-state traffic, taken separately from all other traffic?

A That is, from origin to destination?

Q. Yes.

A. It would be in excess of four hundred miles.

Q. I believe you have already stated that the average loading of trans-state cars is very much higher, generally, than other classes of traffic?

A. Yes, sir.

1301 Q. What proportion of the total traffic is fruits and vegetables—perishable stuff?

A. For the six months ending Dec. 31st, on the St. Louis Iron

Mountain & Southern, the California fruit was .10% of the entire traffic.

Q. When you say "St. Louis Iron Mountain & Southern" do you mean the Iron Mountain in Arkansas or the St. Louis Iron Mountain & Southern Railway System?

A. That is the Iron Mountain System.

Q. Go ahead.

A. Other fruits and vegetables 1.26%.

Q. Is that, again, on the Iron Mountain System or on the Iron Mountain in Arkansas?

A. That is on the Iron Mountain System.

Q. Go ahead.

A. Cattle, .58%.

Q. Is that on the Iron Mountain System or on the Missouri Pacific?

A. On the Iron Mountain System.

All other commodities would be 98.6% of the traffic.

Q. On the Iron Mountain System?

A. Yes, sir, on the Iron Mountain System.

Q. What do you include in "other commodities."

A. Everything but cattle and perishable freight. That is, perishable freight is represented by fruits and vegetables—green stuff.

1302 For the twelve months making up the calendar year of 1907, the California fruits would be..... .10%
Other fruits and vegetables..... 1.35%
Cattle ..... .55%
Other live stock..... .31%

And all other commodities except the four mentioned, would constitute 97.69%.

This is for the St. Louis Iron Mountain & Southern System.

Q. Is that a sufficient amount to affect the relation in the matter of cost between state and interstate traffic, to any appreciable extent?

A. In my judgment it would not have any effect that could be noticed, as between the cost of intrastate and interstate traffic.

Q. Refrigerator cars, I believe are used in transporting perishable fruits most largely, aren't they?

A. Well, they are used in transporting fresh fruits and some classes of merchandise; as for instance, candies in the summer time and sweets of that sort, and fresh meats.

Q. What proportion of the total traffic is represented by the red line on Exhibit 30, which shows the earnings for the change in the units per ton mile?

A. That is the red line on the graphic chart, below the state line?

Q. Yes.

1303 A. That would represent the freight earnings which constitutes something more than 70% of the entire gross earnings.

It would be 71.51% of the entire gross earnings of the railway. That is, the major part of the earnings of the company.

Q. What percent did you say?

A. 71.51%.

Q. You have already testified, I believe, to the increase in size of locomotives, rolling stock and so on; and you have shown that there has been an increase in the capacity of locomotives and cars.

What effect did that increase in capacity and efficiency have upon the expense of maintenance?

A. Well, those larger units require a greater original outlay than the smaller units. That is, they require a larger outlay of material and labor because of their increase in size.

With the increased cost of labor and with the increased cost of materials, the expense is largely increased.

The expense would be increased on units of smaller size, and there would be increased in a much larger ratio on the units of larger size.

Q. In speaking of the cost of conducting miscellaneous traffic you stated on your cross-examination as follows:

"With an exact division, adding the miscellaneous earnings to the principal traffic, the additional cost, whatever it may be, that we would assume the intrastate traffic should bear, is added to the actual percent of intrastate traffic to get a new basis of new percents, which results in reducing more than 100%."

1304

The meaning of that paragraph is not entirely clear to me and I would be glad if you would state just what meaning you intended to convey?

A. I naturally referred there to the intrastate and interstate passenger traffic, and the element of miscellaneous traffic; and to the fact that the largest part of the miscellaneous was taken into the passenger traffic.

The effort I made there was more an explanation of the way of arriving at extra cost, and was merely to arrive at the method of arriving at extra cost.

That word "reducing" should be changed to "producing."

For example, take 35%, my judgment of the added cost of intrastate over interstate passenger business; originally we would start out with the percents of intrastate, interstate and miscellaneous, as represented by the actual revenue derived from each.

In ascertaining the exact cost the 35% would be added to the intrastate passenger. And this would bring about a relation like this:

63.49% intrastate passengers.
31.96% interstate passengers.
21.01% miscellaneous.

1305

That would produce more than 100%.

Then adjusting these as they bear a ratio to 100% would bring, or produce, for the intrastate passenger traffic 34.52%.

Interstate .....
Miscellaneous .....

Making a difference in the interstate traffic an increase of 2.56%.

and a decrease in the interstate of 4.52% and in the miscellaneous of 2.79%.

That was the explanation that I intended to make, to show the formula used to ascertain the extra cost.

By increasing the cost of the intrastate traffic, the cost of the interstate passenger and the cost of the miscellaneous passenger traffic were reduced to the same extent that the intrastate cost was increased.

Q. I notice in the second answer that appears on Page 615 of your examination the phrase "Miscellaneous expenses" is used; and the same phrase is used on the last line of that page, speaking of the miscellaneous traffic:

Look at those answers and state if that was the phrase you intended to use in those two instances.

A. No, sir. In both cases the phrase should be "miscellaneous earnings."

Q. I believe you stated that there was a difference in the cost of conducting that part of the miscellaneous traffic which relates to mail and express, and which is local in its character, and has to be handled locally, and that which is through: and I believe you
1306 also stated that it would be impossible to make any division or apportionment of that: am I correct about that?

A. That is correct.

Q. I want to know your views as to how the cost of that traffic in its entirety compares with other kinds of cost, and whether you would treat it on a level with the cost of intrastate traffic or interstate traffic?

A. Taking the effort that is necessary to acquire these miscellaneous earnings, in my opinion, taken as an entirety the miscellaneous earnings are analogous to the interstate cost rather than to the intrastate.

Q. You spoke of that subject in your direct examination and does what you say there apply to the miscellaneous traffic in its entirety?

A. Yes, sir, in its entirety, because it is not susceptible of division.

Q. Mr. McPherson, does revenue basis of division represent the transportation of the different kinds of commodities and classes of traffic? Is it representative in a general way, I mean?

A. Not exactly, perhaps; but it is representative—or, in other words, it recognizes a distinction between the various characters of traffic which is represented in the classes; and the fact that different rates prevail for the transportation of the different classes of freight.

Q. In arranging the schedule of charges for transportation
1307 there are broad, general divisions made, aren't there, consisting of commodities of different sorts, and of various classes running one to four or five?

A. Yes, sir.

Q. Those classifications are made, as I understand, for the purpose of getting a rule or principle upon which to base the rates: am I correct in that?

A. Yes, sir, there really would be no other reason for making those classifications, except to make distinctions between these commodities.

Q. What I want you to tell me is, whether the revenue basis of division or apportionment represents these different classifications.

A. Yes, sir. The revenue would contain amounts differing on both weight and distance.

In the first class it would represent a certain amount of money received per hundred pounds.

In the second class another amount. In the third class another amount.

It would be a collection of all of the revenues of the Company derived from the transportation of many different articles, and of different character, and I know of no other basis that would recognize the classification of commodities or articles that appear in the classes.

Q. What is the practice of railroads generally in the matter of adapting the capacity of their passenger trains to the average
1308 volume of passenger traffic? To illustrate more clearly, what I mean is: suppose the average volume of passenger traffic between Little Rock and Fort Smith could be accommodated in a daily train carrying 5 cars, would any railroad operator put on a train of ten cars for the purpose of accommodating that traffic?

A. Oh no.

Q. What is the practice in that respect?

A. The practice of the Railway is to provide in its trains as near as it can for the maximum use that will be made of the cars from one end of the district or division to the other. It may be that in going into the larger towns, or for a short distance approaching the larger towns, that that maximum will be reached or even exceeded; and that may be true also in leaving these cities and towns, for a short distance. And then there might be ample seating space for more passengers than are using the train, until we approach another town of any consequence.

The general idea is to provide sufficient coach space for the maximum demand that would be made on the train from one end of the division to the other.

Q. Is the capacity of the train usually increased or diminished, as the case may be, in proportion as the volume of traffic changes, if there should be a change: how is a change of that sort effected?

A. If the increase in travel is permanent and gets beyond
1309 the maximum capacity provided by the railroad, then additional cars are added. If for any reason there should be a recession then the cars would be reduced in number.

Q. You were asked on cross-examination if it were not a fact that facilities for handling passenger traffic are practically fixed quantities: I want to ask you if that is a fact, where conditions are changing; or whether the facilities for accommodating the travel are so arranged as to be adapted at all times to the requirements of public travel.

A. The facilities afforded for conducting the passenger service are more fixed than the freight; but that is represented by the regular scheduled trains.

Q. I am speaking now of the facilities for handling the traffic; not

the service, but the facilities furnished for handling the traffic, coach and car accommodations, and matters of that sort.

A. That is what I am getting at.

Q. Go ahead.

A. That is represented by the regularly scheduled trains and provision that is made daily of about the same number of trains for the average traffic. This may fluctuate as between days when occasions may arise, when excess travel must be provided for. Whenever there is any addition to travel anywhere that must be provided for by providing additional cars. Sometimes it must be provided for by additional trains.

That is a matter that is gradual in its evolution.

1310 On some districts of the road the necessity for furnishing additional facilities may come upon the Company suddenly.

So far as the fixed facilities are concerned, stations, platforms, trucks and station organization, those are likewise nearer fixed than in the freight service, but they must be increased with any considerable increase in the volume of travel, or in the additional amount of baggage which follows the increased volume of traffic.

Recross-examination.

By Mr. HILL:

Q. I understood you to say in your re-direct examination that the cost of maintenance of way was much higher in Arkansas than in Missouri: is that right?

A. Relatively, yes.

Q. What do you mean by "relatively"?

A. I mean as a proposition in its entirety. It might vary in any one year.

Q. How does the cost of maintenance in Arkansas compare with the cost of maintenance over the entire line?

A. I am unable to give you the figures on that. We know that our tie maintenance is higher for the reason that the average life of a tie is less. And we know that much of the territory in Arkansas through which our road runs, particularly East of the main

1311 line, is low and swampy; and that makes the maintenance expense larger than where the contrary condition exists.

Q. A good part of your line in Arkansas is in the mountains, isn't it?

A. A part of it is in the mountains.

Q. Wouldn't that counter-balance what is in the swamps?

A. That would not reduce the cost of maintenance.

Q. Turn to your exhibit 3, statement 4: you say maintenance of way and structures as apportioned to Arkansas is 54%: I believe your mileage in Arkansas is 52%, is it not?

A. That is correct.

Q. The swamps were not as bad on you as you thought they were, were they?

A. It would depend on what the 2% was on. It shows an increase over the average.

Q. You have a swamp or two in Southeastern Missouri, haven't you?

A. There is some—I am not reflecting on the State of Arkansas Judge.

A. I would not assume you would do that for anything Mr. McPherson. Just loading it down, that is all.

Yesterday I was asking you something about your Pullmans and called for the contract and stopped my examination at that point:

I see from your testimony you pay no mileage on the Pullmans. But the point I was getting at there was whether it was not

1312 more expensive to carry Pullmans than it was to carry day coaches.

A. The expenses that would fall on the railroad correspondingly would be that on the Pullman cars we pay no part of the maintenance; while with the coaches we bear the maintenance as well as all the expenses of operation.

In eliminating any charge for maintenance for Pullman cars from our expenses, and any cost for mileage, we have gone far toward putting the cost as between the two, which would be represented by the difference in weight, on an equality.

Q. The effect on the track is more severe with a Pullman than a day coach isn't it?

A. The Pullman weighs more than the day coach, but I believe you have read into my testimony here that to which I testified in the cattle raisers' case, that the locomotives as units cause a greater wear on the tracks than cars. And the difference in maintenance between ten or fifteen heavy trains, or ten or fifteen light trains would not be especially material—assuming, of course, that the locomotives were alike.

There is a difference in weight but that is of course only of comparative friction.

Q. Don't you pay for all repairing and the restoring of Pullmans that are injured or destroyed in your operation?

A. If it is our fault. If we should break up their property we would have to pay for it.

1313 Q. Whether it was your fault or not—if it were your misfortune?

A. Yes, if it were our misfortune. But that is different from maintenance. It costs between $920.00 and $1,000.00 a year to maintain a coach.

Q. I was not assuming that was maintenance. I was asking if that is not a fact.

A. It is a fact that if the property was injured while in our possession it would be our duty to repair it.

Q. What revenue do you get out of a Pullman car?

A. We receive from the passengers who ride in the Pullman cars the regular established rates of railroad fare. We receive no part of the earnings that accrue from the sleeping apartments unless the same shall exceed the average of $7,500.00 per car per annum. In that event the Pullman Company pays the Railway Company one half of that excess.

Q. Don't you get any other revenue from your Pullman contract?

A. I do not know of any, Judge. I do not think we do. It is a couple of years since I read this contract over, but the impression is pretty firmly fixed in my mind that that is all.

Q. Don't you own a three fourths interest in the Pullman equipment that is used on your line?

A. No sir we own no interest in it at all.

1314 Q. You did under this former contract didn't you?

A. Yes sir under the contract in effect prior to July 1st, 1907 the cars were operated on the association plan, in which the Railway Company had a three fourths interest and the Sleeping Car Co. a one fourth interest.

Q. Then you got three fourths of the net revenue from the operation of the cars on your line during that period, didn't you?

A. I don't know whether it was net or gross. I assume it would be net. I never have read that part of the contract. That was not the working part of the contract with which the operating department was concerned.

Q. I think it says "net" here (indicating contract).

A. That contract has been out of date now since June 30th, 1907.

Q. I understand that. When that went out of date did the Pullman Company re-purchase that three fourths interest you owned in its cars?

A. I suppose they did. I do not know anything about the transaction.

Q. You get no revenue at all, then, from the Pullman Co. under your present contract, unless the revenue per car exceeds $7,500.00 per year?

A. No sir, we get no further revenue.

Q The statement you furnish from the Pullman Co. for the year ending June 30th, 1908 shows that the average gross earn-

1315 ings per year per annum was 5,818.65. It would, therefore, follow, under your present contract, that you would get nothing from the Pullmans at all.

A. That would be the result, if the cars did not earn an average above the minimum.

Q. You stated that this interest which your Company owned prior to June 30th, 1907 is not owned by them now in whole or in part.

A. No sir. We returned the cars to the Pullman Company.

Q. In what account would the money you receive from the resale to the Pullman Company appear?

A. I do not know, Judge. That is not in my jurisdiction.

Q. I understood you to state on re-direct examination that the average trans-state haul was 400 miles or more on freight: where did you get that? It does not so appear in your exhibits.

A. No sir, the exhibits, Judge, undertake to deal only with the mileage made in the State of Arkansas. You will notice that the trans-state haul in Arkansas is 285 miles. In order to be a trans-state shipment of course it must have a mileage on both ends of this 285 miles.

A large part of that trans-state business is grain from Kansas City by way of Alexandria to New Orleans, and the extremes between the

terminals in such a case as that would be close on to 1000
1316 miles.

Then there is the lumber business from Louisiana and Texas to St. Louis.

Q. What value have those hauls outside of Arkansas in this inquiry?

A. Only in a general way as showing that in the average haul that is given in these exhibits it does not necessarily mean to the Company that they represent terminal charges. The terminal charges would be extended in all probability more than 100 miles further.

Instead of dealing with two terminals on 290 miles we would be dealing with two terminals of 100 miles.

Q. You are straddling them out further.

A. Necessarily, and that would reduce the cost of operation.

Q. You testified about your miscellaneous earnings that by analogy they should follow the interstate rather than the intrastate expense, as I understood you?

A. Yes sir.

Q. Which intrastate traffic should they follow: the freight or passenger?

A. As they relate to either passenger or freight or as they are incidental to either service.

Q. To which do you relate the mail?

A. The mail and express to the passenger traffic.

Q. Both of them?

A. Yes.

1317 Q. Then you would add 35% instead of 100% increased extra cost to those items?

A. I don't understand you.

Q. On your passenger increased expenses for intrastate business you put 35% and on your freight at least 100%, as I understand you?

A. On freight at double the division on the revenue basis it would decrease the proportion of miscellaneous .52%.

Q. I am not talking about the extent of the thing, but I am talking about the basis on which you do it:

You say that these miscellaneous earnings should be classified with the interstate earnings: now I ask you which one of the interstate earnings they should be classified with, so far as mail and express are concerned.

A. I have not gone into the express because it is so small in proportion.

Mr. MOORE: You are asking him what additional cost he would assign to the miscellaneous.

Mr. HILL: I first got him to state where he puts it and I then asked him what additional cost he puts on it.

A. I haven't put any additional cost on either freight or passenger; by increasing the intrastate in both cases, freight and passenger, you decrease proportionately the interstate and miscellaneous.

1318 Q. That is getting around to it in another way. It is the same proposition.

A. I do not know that that is even an accounting proposition,

Judge. That is a formula that is here stated (indicating exhibits). I did not make it, but in my study of it, I believe it is correct.

Q. Mr. McPherson, has your experience with that been like that line about something:

"That to be hated needs but be seen;
Yet seen too oft, familiar with its face,
We first endure, then pity, then embrace."

A. I believe that requires no answer.

Q. At least, that you have "embraced it." You will admit that if you answer the question.

A. In my judgment when you have increased your intrastate cost, either freight or passenger, you should continue to take in all of the factors, in whatever relation they may each bear to the intrastate cost as found.

Mr. HILL: Mr. Moore I have not had time to read those mail contracts. When I have read those I may want to ask some questions about them, but with that exception I am through with Mr. McPherson.

Redirect examination.

By Mr. MOORE:

Q. I believe the White River Line of the St. Louis, Iron Mountain & Southern Railway in Arkansas is a part of your line in the mountains, isn't it?

1319 Yes sir.

Q. Is there any other part of the line in the mountains?

A. Not very much. I do not know. That is rather a hilly country on the line from Wynne North. It runs up into the Ozarks where it touches the main line at Knobel.

Q. What is the length of that part of the line in Arkansas called the Wynne Branch? What is the length of that part of it which you say runs into the Ozarks?

A. It is not all of that hilly character——

Q. I asked you what is the length of that part of the line?

A. —but the line which is from Wynne to Knobel is.

Q. It is a short distance, isn't it? I do not care about the exact mileage.

A. I should say it is under one hundred miles.

Q. What is the character of that White River Branch and the relative cost of maintenance on that line as compared with other parts of the line?

A. The cost of maintenance would average in the mountainous country——

Q. Maybe I am mistaken, but I had the impression it was a very expensive line in point of cost of maintenance.

A. It is of an average mountain maintenance.

Q. A large proportion of the rest of your main line is in low country, isn't it?

A. Yes sir, the greater part of the Arkansas line is not in
1320 the mountainous country.

Q. Is that Pullman contract that has been referred to, with the St. Louis, Iron Mountain & Southern Railway Co. or with the Missouri Pacific Railway Company?

A. I have always understood——

Q. Look at the contract and see.

A. Do you mean the new contract?

Q. I mean both of them.

A. The new contract effective June 30th 1907 deals with them as a system.

Q. I believe, Mr. McPherson, you have stated that the length of haul is a large factor in determining the relative cost of transportation.

A. Yes sir.

Q. Isn't that true without regard to State lines?

A. Yes sir that would be immaterial whether it were state traffic or interstate traffic.

Q. If you have a haul that is 1000 miles in length and runs across three or four States, the effect of the distance is the same on every part of that haul, isn't it, so far as it relates to cost?

A. So far as terminal cost is concerned that would affect only the two extremes. It would be just the loading at one point, the movement 1000 miles, and the unloading at the other point. That would affect your average in the State just the same as between a haul of one hundred miles and a haul of thirty miles.

W. B. DODDRIDGE, a witness of lawful age being duly pro-
1321 duced, sworn and examined on the part of the complainants testified as follows:

Direct examination.

By J. M. MOORE:

Q. State your name and where you reside.

A. W. B. Doddridge, St. Louis, Mo.

Q. Have you had any experience in the service of railroads?

A. Yes sir.

Q. State what your experience has been, what length of time you have been engaged in that kind of work.

A. I entered the railroad service in the State of Ohio in 1865, as a telegraph operator. In 1867——

Q. You need not go into any great detail, but state just in a general way.

A. I entered the service of the Union Pacific Railway Co., occupying various positions on that road, from telegraph operator to General Superintendent.

Q. How long were you in that service?

A. Until 1884.

Q. What departments of the service were you engaged in on that road?

A. As agent, station agent, general agent, superintendent
1322 and general superintendent.

Q. What were your railroad connections after you left that line?

A. In 1896 I entered the service of the Missouri Pacific Railway Company as Superintendent of their lines from Kansas City to Omaha.

In 1889 I became General Manager of what is now the St. Louis Southwestern Railway, continuing in that position until 1893.

I then became General Manager of the Missouri Pacific System, until the year 1900.

Since that date I have been engaged in other business.

Q. The St. Louis, Iron Mountain & Southern Railway in Missouri and Arkansas, the entire System, was under your jurisdiction as General Manager of the Missouri Pacific System, wasn't it?

A. Yes sir.

Q. Has your employment afforded you opportunity to investigate the various problems as they arise as to conditions of transportation, both state and interstate, and of the cost incident to the several kinds of traffic?

A. Yes sir. I think I have a very thorough general
1323 knowledge of all of the conditions surrounding the various classes of traffic incident to the operation of railroads under my charge.

Q. Did you become familiar, during the time of your connection with the St. Louis Southwestern Railway and with the St. Louis, Iron Mountain & Southern Railway Co., with the conditions that existed in the State of Arkansas affecting the various railroads and with the conditions that existed on the lines of those roads?

A. Yes sir. I was very familiar with the conditions in Arkansas during the time I had charge of the St. Louis Southwestern Railway and the St. Louis, Iron Mountain & Southern Railway Co.

Q. How does the cost of railroad operation in the State of Arkansas and in that part of Arkansas in which those lines are located compare, in your judgment, with what it is in other territories, other States, in that section of the country?

A. The railroads in the Southern country generally are more expensive to maintain than in sections of the country lying further North.

The reason for that is the character of the climate and the unstable condition of the soil in the low country, and the relatively large streams crossed by the railroads in the low country.

Q. What are the characteristics of the territory in which the St. Louis, Iron Mountain & Southern Railway and the
1324 St. Louis Southwestern Railway in the State of Arkansas are located?

A. A great deal of the mileage of the St. Louis, Iron Mountain & Southern Railway is in the low country. That is likewise true of the St. Louis Southwestern Railway. Of course there are parts of it that are in higher country where the drainage is better, and these bad conditions do not exist. However, the deterioration of

timber is more rapid in all parts of the country South of the State of Missouri.

Q. Do those roads cross large streams in the State of Arkansas?

A. Yes sir, the Arkansas River, the Red River, the White River, and some others in the southern part of the State are difficult and expensive streams to deal with.

Q. Do both those roads cross those streams?

A. Yes sir.

Q. Is there a large exposure to flood damage and to other incidental cost growing out of floods in those streams, in the operation of those roads?

A. Yes sir at certain times, in cases of extreme floods in those streams and in the Mississippi River, there is an extraordinary expense entailed from high water.

Q. Have you given any thought to the relative cost of conducting state and interstate transportation, freight and passenger.

1325 A. Yes sir. When I was actively engaged in railroad operation the question of relative cost as between state and interstate transportation was not given much, if any consideration; for the reason that the railroads were operated as a unit, and there were no state restrictions, making it necessary to investigate the differences of costs as applied to different States. We considered questions of that kind strictly upon the basis of the difference between the local and through traffic, without any reference to State lines.

Q. Have you since that time considered the question as to the difference between the two kinds of traffic you speak of, the local and the through?

A. Yes, sir, the principle underlaying the conditions as applied to States are quite similar to those that exist when the State is not considered.

The difficulty of the proposition is to make a division as applied to State lines. It is like cutting a section out of a long line of railroad, and undertaking to determine the elements as apportioned to that section.

Q. I will ask you, Mr. Doddridge, if as a result of your investigation and the consideration you have given to that subject, you think there is any difference in the cost of operation as between state and interstate traffic, considering the different manner in which the two kinds of traffic are handled.

A. Taking into consideration the fact that the state traffic is necessarily the short haul traffic of a railroad, it is necessary to

1326 compare it with what we call the interstate traffic of a like traffic density; and in order to supply the service required in handling it, and that it must be done under different circumstances and conditions from which the other traffic is handled, increases the cost of doing the service.

Q. Is there any way by which the expense of conducting the two kinds of traffic can be definitely separated and ascertained?

A. There is no method that I am aware of by which this separation can be definitely ascertained.

Q. The question arises in this case as to probably the best manner of arriving at the truth of dividing the expenses of these two kinds of traffic, for the purpose of ascertaining what the difference in cost of operation is: several bases have been spoken of, among them the ton mile basis and the revenue basis of division:

I want you to take them in the order I have stated them and tell us what your views are as to each method of division. First the ton mile basis, and then the revenue mile basis.

A. As a basis for dividing expenses between the different classes of traffic, the ton mile is useless for the following reasons:

It is a strictly mechanical unit. It deals with but two of the elements entering into the cost of transportation; namely, the weight and the distance. It brings all of the ton miles
1327 produced, to a common, average level; the short haul with the long. It averages commodity freight with class freight, and makes no allowance for the space occupied or for the value of the goods. It makes no distinction between car load and less than car load; a ton of live stock or a ton of merchandise.

The ton mile unit would charge the cost of transportation of a car load of coal, an article of prime necessity, the same as a car load of merchandise.

The ton mile deals with the net weight of freight only, and does not take into account the tare weight of the equipment necessary to be used to transport it; or of the empty car mileage required when the traffic is unevenly balanced.

The ton mile unit averages all terminal expenses regardless of the length of the haul.

The ton mile unit does not take into account all of the elements affecting expense, such as the direction and the kind of traffic; the character of traffic; the character of service.

The ton mile treats a railroad as a level plain, making through trains or local trains, fast time or slow time.

The ton mile as a unit is available for a limited number of comparisons, such as testing the efficiency of car loading, train loading, and average cost or revenue derived from certain commodi-
1328 ties, and the making of comparisons of one commodity with another upon the same railroad or upon different railroads.

The ton mile unit as applied to all freight traffic of a system of railroads, for the purpose of ascertaining the average revenue derived per ton per mile, or the average expense per ton per mile, is sometimes used. But the result thus obtained has only a very general significance until an analysis of the classification of the tonnage dealt with and the circumstances and conditions of its transportation is considered in connection with it.

The ton mile makes no allowance for difference in topographical conditions, which affect expenses.

The ton mile unit treats a railroad as a machine carrying a regular load, under uniform conditions.

Q. Mr. Doddridge, in view of the conditions which you have recited in your statement, do you think the ton mile can be used as a unit for determining or apportioning the expense of conducting the

two classes of traffic under consideration in this case—that is, the interstate and intrastate traffic?

A. No sir, not as a definite unit.

Q. What, in your judgment, is the value of the revenue or earnings as a basis for making that apportionment? I want you to state your views in regard to that now.

1329 A. There is no unit or basis that I am aware of by which such a separation or apportionment can be made with mathematical accuracy. For the reason that all classes of traffic are carried in the same cars, intermingled over the same rails, in the same trains, and handled by the same employees, using the same terminals, a definite separation of common expenses is impossible.

To be fair and equitable a unit must be used that will reflect all of the average conditions under which transportation is furnished and charge each ton mile or each passenger mile with its proper proportion of all of the expenses.

In the establishment of rates many elements are considered, such as the physical cost of the service, the weight, the distance, the competitive conditions, the space occupied, the character of the service, and the value of the service to the shipper. It is, therefore, necessary to use an arbitrary unit.

In my judgment the best method that has been suggested for this purpose is what is commonly known and called the "gross earnings basis." That is, the gross earnings derived from each class of traffic for the given period, being accurately known, the total expense for the same period being accurately known, the expenses between state and interstate traffic may then be divided and apportioned upon the percent each class of gross earnings bears to the whole.

1330 The aggregate of gross earnings is made up of thousands of small units, each of these units representing the amount received for the transportation of indvidual shipments. The sums charged for transportation bear some definite relation to the cost. These sums vary, being governed by circumstances and conditions; such as weight, distance, and classification, and the commercial conditions under which the transportation is furnished.

Q. What are the commercial conditions?

A. I refer to competition and other like conditions, which enter into and influence the rates charged on many classes of commodities and traffic.

For instance, the railroads charge a much higher rate on many articles where the value is large and liability great, than they do on other articles where the weight and bulk is similar, but they are of less value.

There are a great many considerations of this character that enter into and influence railroads in determining the proper rates to be charged for transportation.

The gross earnings reflect all of these conditions and by allotting the expenses in proportion to the amount which each shipment produces in the aggregate, seems to be the most reasonable and equitable method by which expenses can be apportioned between state and intersate traffic.

Q. Does the difference in the value of the articles transported and the liability incurred enter to any extent into the dif-
1331 ference in rates and affect the difference in cost?

A. Yes sir, these things are always taken into consideration as one of the factors to be considered in the establishment of rates. However, there are many other considerations that also affect the establishment of rates, such as competitive conditions between producing sections and consuming markets.

The following example illustrates the general theory which I have in mind:

The interstate rates upon the products of the forest, which constitute a large proportion of the tonnage of Arkansas, to the consuming markets in other States, are established mainly upon the value of the service to the shipper and to the consumer, based upon existing commercial conditions.

The physical cost of transportation in individual cases being a secondary consideration, as a whole the traffic yields a profit either directly or indirectly.

Changes in rates are necessary from time to time and would affect the allotment of expense as between state and interstate traffic to that extent, while it is not contended that the actual physical expense would be changed.

Interstate rates frequently extend across several States and if below normal by comparison with other rates, for the reasons
1332 stated each State would bear its prorata in the reduced expense thus alloted.

Other interstate rates as compared to the total may be abnormally high, which would tend to equalize the condition in the example pointed out.

Interstate rates into and out of Arkansas must be so adjusted as to enable its products to find markets in competition with other producing sections. This principle is essential to the prosperity of both state and the railroads. Intrastate traffic depends upon this condition being maintained.

Trans-state traffic as a whole being carried at a much lower cost than short haul traffic, low interstate rates applied to that class of traffic in some cases works no injustice to the intrastate traffic in the apportionment of expenses as a whole.

The gross earnings method of apportionment of expenses deals with all of the intrastate traffic as a single unit and with all of the interstate traffic as a single unit, upon a system of general averages, without reference to individual shipments or particular rates.

In the case of expense alloted to miscellaneous earnings, in my judgment the State has much the best of it, considered from the standpoint of actual, physical expense. And the reason is this:

If there were no miscellaneous earnings from mail and express the expense would not be very much reduced, as the necessity
1333 of running the passenger trains would still remain. The difference would be in one or two less cars to the train.

Q. In that respect the miscellaneous expense, so far as operation

is concerned, is more of an incident than a principle matter, isn't it?

A. Yes sir, the miscellaneous revenue considering the physical expense attached to it, in my judgment, is higher than other expenses.

1334 Direct examination of W. B. DONOHUE continued.

By Mr. MOORE:

Q. Is there any difference in your judgment in the cost of handling state and interstate traffic?

A. Yes, sir.

Q. I wish you would give your views as to that difference and the grounds upon which you base them?

A. The difference in cost cannot be accurately determined. Relatively but few of the expenses can be identified as directly attributable exclusively to either class of traffic. Under normal conditions the best that can be done is an approximation based upon a system of averages.

After ascertaining certain of the elements of cost, it can be approximated by applying the percents of expenses thus obtained to those items of expenses that are common to all classes of traffic.

Individual cases have but little bearing upon the subject as a whole.

In considering this question state lines are artificial and
1335 have no effect other than in a technical sense.

Under equal conditions as the haul shortens either in the freight or in the passenger service, the proportional cost increases.

As the density of an evenly balanced traffic increases within certain limits the ratio of cost decreases.

The reason for this is, that a large percentage of expenses is stationary and have nothing to do with the haul.

It is the circumstances and conditions under which the traffic is necessarily handled that affects its proportional cost.

Interstate freight is in two classes, each handled under somewhat dissimilar conditions.

That part of which is transported across the state, as upon a bridge, and that part which originates or has its destination within the state, and in that respect is local freight.

Trans-state freight has a small percentage of terminal expense within the state; and the interstate freight has but one terminal expense.

But for economical reasons both classes of freight are sometimes rehandled at divisional or junction points.

The great bulk of intrastate freight is carried upon local or way freight trains, in common with such interstate freight as there may be for distribution or collection.

This train is run daily, except Sundays and holidays, as
1336 nearly as practicable in daylight only. It does the local switching along the line and any other local work that may be required. The train crew local and unionl less than carload freight.

It is a special, arbitrary freight service, run without regard to the tonnage-load to be moved; and, therefore, as measured by its performance is a very expensive class of train.

Upon branch lines the local trains do all the business, as a rule.

The through trains are loaded with trans-state, interstate, and a small percentage of state freight. They are started from massing points and are not usually run unless there is a tonnage-load, or run for the purpose of balancing the power.

The intrastate freight traffic is the shortest haul business handled by the railroads in Arkansas; and for that reason, if for no other, is the most expensive.

It is true that quite a large amount of interstate freight is carried upon local trains, but the proportion of that class of interstate freight to the total of interstate freight is very small.

Q. Can you state approximately what proportion of the freight carried on local trains belong to each class of traffic; that is, intrastate and interstate?

A. I have no definite information upon that point; but, based upon my general knowledge and experience with railroads
1337 in Arkansas, I should judge that the greater proportion of the load of the local trains is interstate freight.

But, at the same time, the bulk of the state freight is carried upon local trains and but a small proportion of the total interstate freight is carried on local trains.

Q. What proportion of the intrastate freight is carried in local trains: that is the question I want you to answer.

A. On the St. Louis Southwestern Railway 8% of the interstate freight is carried upon local trains; and 92% is carried upon through trains—as shown by their test made in October, 1908.

I cannot state what the proportions are on the St. Louis, Iron Mountain & Southern Railway but the exhibits filed by that company show that a little less than 20% of the total tonnage is local or intrastate; and that something over 80% is interstate.

It is also shown in evidence that 51% of the traffic of that road in Arkansas is trans-state.

It would, therefore, follow that a very small proportion of the interstate freight is carried on local trains, but I cannot state what that percent is.

Q. If it is true that a small proportion of the interstate freight is carried on local trains, does it not follow that a very large proportion of that class of traffic is not subjected to the local train expense that accrues against local traffic, and to the increased expense growing out of the difference between the long and the short haul?

1338 A. That is true. Only a small percentage of the interstate traffic is subjected to the high cost of the local trains.

Q. In what manner does the terminal expense increase the expense of conducting local traffic?

A. All the terminal expenses are the same, without regard to the length of the haul; therefore, these expenses per ton per mile increase as the haul shortens.

What is meant by "terminal expense" is the point of shipment and point of delivery. The terminal expense includes labor at stations, supplies, and all the facilities used in the transaction of business, such as house tracks, team tracks, yard engines, switchmen, and the cost of the maintenance of these structures.

The average length of haul on the freight business handled by the St. Louis Southwestern Railway in Arkansas, as shown, is, interstate 231 miles; intrastate 44 miles.

The average interstate haul is 5.3 times greater than the state haul.

The average length of haul on the freight business handled by the St. Louis, Iron Mountain & Southern Railway in Arkansas, as shown in the exhibits filed by that railway are interstate 224 miles; intrastate 70 miles.

The average interstate haul is 3.2 times greater than the intrastate.

1339 Therefore, the terminal expense in the case of the St. Louis Southwestern Railway is 10.6 times greater than the terminal expense of the interstate freight.

In the case of the St. Louis, Iron Mountain & Southern Railway it is 6.4 times greater than the interstate freight carried by that company.

This estimate does not make any allowance for the absence of terminals in the trans-state freight by either company.

Q. Do the additional terminals involve a large element of additional expense in the transportation of the local or state freight?

A. Yes, sir. I am not advised of the exact percentage that the terminal expense bears to the whole expense of operating the railroads, but it is usually somewhere in the neighborhood of between 15 and 20%.

Q. Have you any knowledge of a test made on the St. Louis Southwestern Railway in October, 1908, for the purpose of ascertaining the difference in the cost of conducting the two kinds of traffic under consideration?

A. Yes, sir.

Q. What does that test show on that subject?

A. The test shows on the basis of gross earnings the intrastate freight train expense for labor and fuel costs 5.5 times greater than the interstate. It shows that the cost of service and fuel for running the local train per mile to have been 47% greater than the cost of running the through train per mile.

1340 It shows that the local train produces 129 ton miles of commercial freight for each mile run; and the through train produces 399 ton miles of commercial freight for each mile run.

The average number of loaded cars per train mile in through trains was 23; 72% of the total train.

And in the local trains 11, or 69% of the total train.

The average number of empty cars per mile in the through train was 9, or 28% of the total train.

And in the local trains 5, or 31% of the total train.

The average number of all cars per train mile in through trains was 32; and in the local 16.

78% of all intrastate business was handled on local trains.

The remaining state freight, 22%, was handled on the through trains.

92% of the total interstate business was handled on through trains.

8% of the total interstate freight was handled on local trains.

Of company freight, 49 tons to each mile run, was carried on through trains.

21 tons for each mile run was carried on local trains.

The average tons of all dead weight, (that is, non-revenue weight) which includes the weight of the locomotives, cabooses, company freight, and all cars, per train mile, was 734 tons on through
1341 trains; and 397 tons on local trains.

The through trains carried more than three times as much commercial business per mile run as the local trains, but required less than two times as much dead weight.

The average number of dead weight to a ton mile of commercial freight was, less than carload through trains 4.59 tons.

Local trains, 9.44 tons.

Carload, through trains, 1.62 tons.

Local trains, 1.90 tons.

Both, through trains, 1.84 tons.

Local trains, 4.09 tons.

The per cent of dead weight to gross weight on through trains was 65%.

On local trains, 76%.

The per cent of overtime to total wages of train and engine men was 5% on through trains; and 19% on local trains.

Q. What effect, in your op. n, based upon your knowledge and experience in railroad operation, would the figures you have just stated in connection with the test made by the St. Louis Southwestern Railway have upon the cost of handling intrastate freight traffic as compared with interstate freight traffic?

A. The elements of cost that affect the proportion as between interstate and intrastate freight traffic are based first, upon the circumstances and conditions under which the intrastate freight
1342 is necessarily handled as differentiated from the great bulk of the interstate trans-state freight traffic.

These circumstances consist of a relatively low traffic density——

Q. What do you mean by "relatively low traffic density."

A. The low intrastate traffic density—that is to say, the number of tons handled per mile of road as compared with the number of tons handled per mile of road in the interstate traffic.

Q. You speak of the relation of the density of traffic as related to interstate and intrastate traffic, do you?

A. Yes, sir.

Q. Do you mean you would assume that there is a greater density

of traffic of interstate business than of intrastate, and is that what you are referring to?

A. Yes, sir, there is a very great difference in Arkansas.

Q. Explain fully what you mean there, please?

A. The statistics show that the intrastate traffic density of the St. Louis Southwestern Railway was about 33,000 tons per mile of road during the year 1908.

The interstate traffic density was shown to be over 700,000 tons per mile of road during that year.

I believe that is included in the freight statistics on file here.

Mr. HILL:

Q. Do you mean tons or ton miles?

A. I mean tons. Tons represent density, not ton miles.

1343 The MASTER: Is the word "density" and "volume of freight" synonymous?

A. Yes, sir.

Mr. MOORE:

Q. What did you say represents the density of traffic?

A. The density represents the average volume of business.

Q. How is that shown?

A. By dividing the total number of ton miles by track miles.

Q. That shows the number of tons carried one mile?

A. No, sir.

Mr. HILL: Does not that really mean ton miles, then, Mr. Doddridge? I just want to catch your expressions as I go along.

A. No, sir, it does not mean the ton miles. It is the number of tons divided into the miles of road.

Mr. MOORE:

Q. And it means the number of tons hauled one mile?

A. Yes, sir. Or, in other words, it indicates the average volume of business.

Q. Go ahead.

A. The traffic density of the St. Louis Iron Mountain & Southern is greater than that of the Cotton Belt, but I do not know what the figures are.

Q. Continue with your answer, Mr. Doddridge.

1344 A. A business mainly of the collection of freight in small units from scattered stations, or a business of distribution from jobbing centers in relatively short hauls. And, generally, the absence of return loads or reciprocating tonnage.

Q. Tell me there, what is the relation between state and interstate traffic as to reciprocal tonnage.

A. The state traffic, so far as merchandise and supplies are concerned, is distributed from local jobbing points and there is no compensating freight of a like character returning to these centers from the various centers at which this freight is distributed.

Of course, I do not pretend to say there is no use for these cars that are carried out in the distribution of this freight, in other directions. There may be for lumber or for other things.

But the through business——

Q. Up to this point you have been speaking about intrastate business?

A. Yes, sir. Now, the through business, as a rule there is at least a certain percentage of return freight with which you load the cars that are carried long distances.

Q. Is the proportion of return freight larger in though traffic than in local traffic?

A. It is larger, yes, sir.

Q. Is there a material difference in that respect?

1345 A. Yes, sir, I should say there was.

The Cotton Belt has quite an evenly balanced north and southbound traffic, through business.

Q. Proceed with your answer, Mr. Doddridge.

A. The service is rendered daily, Sundays and holidays excepted.

The bulk of state freight being handled upon local trains this train stops at each station or siding to load or unload less than carload freight.

They do whatever necessary local switching may be required.

These trains are scheduled to run as nearly as practicable in daylight, on account of the character of their work.

They make relatively a short road mileage, and carry passengers.

The great bulk of interstate freight, which is of much greater density, is carried upon through trains. Upon the main lines it is usually handled in full train loads and move- continuously, day and night, covering from 250 to 300 miles in 24 hours.

Q. What effect does the speedy or rapid movement of this transstate freight have upon the cost of handling the traffic?

A. The effect is to reduce the number of cars and the number of locomotives, required to produce a given number of ton miles.

1346 Q. In what way is that brought about?

A. It is brought about by the additional miles covered within a certain fixed period of time.

For instance, any local train might, as shown by the Cotton Belt time-card, average 60 miles in 24 hours.

Q. The local train?

A. Yes, sir, the local train. But the through trains make say from 250 to 300 miles in the same period of time.

Q. I suppose those rapid moving trains perhaps consume more fuel and are of greater expense in that way: is there any compensating difficulty the other way?

What I want to get at is, on the whole what is the effect the rapid movement has upon the cost of handling the freight?

A. Taking into consideration the element of time, and measuring the cost of the train by the result in ton miles, it is more economical than the other class of trains.

Q. You mean the rapid trains?

A. Yes, sir, the rapid trains. The kind of trains we are talking about. Trains that carry the ordinary, daily, interstate, through freight.

Q. That class of train produces a larger return on the amount expended than the slower moving train: is that what you mean?

A. Yes, sir, the train that lays over nights and Sundays, and makes but a relatively short road mileage.

1347 Q. I am not asking you to compare those trains with the local trains; but I am asking you to compare the rapid moving trans-state freight trains with the slow moving trans-state freight trains. Is there any point of relation between the cost of service and the return produced by each?

A. What you mean is an especially fast moving through train as compared with an ordinary, heavy tonnage, through train?

Q. Yes, that is what I wish to call your attention to. State how they compare as to the return upon the cost involved in each kind of service, each kind of train, I mean.

A. The aggregate cost of a through fast freight train is greater than the fully loaded, heavy tonnage, freight trains, moving at a slower rate of speed. But as measured by the results——

Q. By the earnings, you mean?

A. The earnings and the time, which is one of the elements to be considered in the use of locomotives and equipment, the difference in the aggregate, increased cost of these fast trains is largely compensated for by the difference in the result.

Q. The element of time affects the question of labor employed, in handling those trains, as well as the use of the equipment, doesn't it?

A. The train employés are paid by the mile, so the element of time in their case would not be affected. But in the use of

1348 the equipment, in the ton miles produced, provided this train could be kept continuously running, as compared with the slow trains, with the larger tonnage, the difference in the cost of the train would be compensated for by the difference in the results.

Q. Which class of train would produce the larger return upon the amount expended in its operation—the slow or the fast moving through train?

A. This is only an opinion, but taking into consideration the earnings from a fast train, I think figured out that the product of the fast train would be found to at least equal that of the slow train.

Q. You think, then, there would be no material difference?

A. There would probably be no very material difference.

In considering a question of that kind you would have to take into account the gross earnings as well as the element of time.

Q. How are cars engaged in rapid movement loaded with reference to their capacity? Or, in other words, how does the loading of cars that are moved rapidly compare with the loading of cars that compose the slower moving train?

A. You mean the tonnage loading of the cars?

Q. Yes, I mean the tonnage loading of the cars.

A. I think it will be found that the cars that carry that class of freight requiring an especially fast train, are usually loaded

1349 lighter than the other cars, because they consist of cattle, fresh vegetables, packing house products, and light articles that load in lighter volume per carload.

Q. What, in your judgment, is the extra cost of conducting intrastate traffic over the interstate traffic?

A. In my judgment the physical extra cost will be found to be four to six times greater in the intrastate than in the interstate.

Q. I understand, Mr. Doddridge, you have been referring heretofore to the cost of conducting freight traffic?

A. Yes, sir.

Q. And this statement just made by you refers to the cost of conducting that class of traffic?

A. Yes, sir, freight traffic.

Q. Is there any difference in the cost of transporting state and interstate passengers?

A. Yes, sir.

Q. What are the reasons that constitute or cause that difference?

A. The general principles affecting the ratio of extra cost, short haul freight traffic, applies to the short haul passenger traffic; but not in so pronounced a degree, as the elements of weight and time are absent.

The length of the journey of each state passenger upon the St. Louis Southwestern Railway, for the year ending June 30, 1908, was 23 miles.

1350 The length of journey of each interstate passenger was 121 miles.

Therefore, to produce an equal number of passenger miles 5.3 state passengers were handled to one interstate passenger.

For the St. Louis Iron Mountain & Southern Railway the average journey was for a state passenger 30 miles.

And for an interstate passenger 118 miles.

To produce an equal number of passenger miles, 3.9 state passengers were handled to one interstate passenger.

The use of two terminals for each state passenger, which includes ticket sellers, baggage handlers, the maintenance of depots, yard service, light, heat, and in some cases extra daily train service upon the main line, run especially to accommodate local traffic, increases the cost of train service arising from the frequency of stops to receive and discharge the short haul passengers and baggage; which includes the wear and tear of equipment, and the increased road speed to make scheduled time; the constitutional requirements providing for separate depot accommodations in coaches.

The increased casualty cost arising from the increased number of passengers boarding and alighting from trains at stations.

The carrying of passengers upon mixed trains.

1351 Q. Those are all elements which you think enter into this increased cost?

A. Those are all elements upon which the extra cost is based.

Q. Are there any other elements that cause extra cost in the carriage of intrastate passengers, such as stations, yard service and things of that sort?

A. I have referred to those elements in a general way.

Q. What do you think is the difference in cost, Mr. Doddridge?

A. In my opinion the proportional extra cost in Arkansas will range from twenty to thirty per cent.

Q. Mr. Doddridge, in the statistics giving the difference in length

of haul as between intrastate and interstate traffic, I understand that the length of the interstate haul represents that part that is within the state of Arkansas:

I want to ask you if the length of haul in the trans-state and all interstate transportation would not be shown to have been greater, if it had been stated with reference to the entire haul from the point of origin to destination, including that part of it which lies without the state as well as that which is within the state?

A. Yes, sir, the length of haul of trans-state freight is, of course, much greater than the length stated in these statistics that
1352 have been filed in this case.

Q. Isn't that true of all interstate hauls?

A. Yes, sir.

Q. You have in your testimony in this case referred to the difference in length of haul as an important element in determining the difference in cost:

In order to get the full effect of that difference would not it be proper and necessary, so far as the interstate business is concerned, to consider the entire length of the haul from its beginning to its termination, in order to compare properly the relation of its cost with the relation to the local haul, all of which, from its beginning to its termination, is shown in the statistics in this case.

A. I believe that is true, but, of course, I would have to take into consideration the total expense of the entire length of haul.

Q. Is not the difference in cost of operation that grows out of the long and the short haul reflected as to every part of that haul, every mile of it, without regard to state lines?

A. Yes, sir.

1353 Q. How do you think the taxes assessed and collected in the State of Arkansas on the property of the Railroads, should be divided between State and interstate traffic, for the purpose of ascertaining the relative cost of those two classes of traffic?

A. I think the apportionment of the taxes should be based upon the relative amount of property used in the transaction of the different classes of traffic.

For instance, if the proportional use of locomotives to produce a given number of ton miles is found to be 4, 5 or 6 times the number of cars used to produce a given number of ton miles, ten or twelve, as indicated by the length of the hauls and the terminal use.

And in the use of the track, if two tons of tare weight is required to produce a commercial ton mile of state freight as to one-half that amount to produce a ton mile of interstate freight, it would seem to me that the taxes should be divided upon the average proportions made up by that method.

Q. The result of that method of division would be to divide the taxes in proportion to the expense of operation, wouldn't it?

A. Yes.

Q. That is the method adopted by Judge Van De Vanter in considering these questions, at the time application was made for an injunction, at St. Paul: in your opinion, is that the correct method?

A. Yes, sir.

Q. You base, as I understand it, upon the relative contribu-
1354 tion of the different facilities towards the service rendered?

A. Yes, sir, that is my general idea; the facilities that the circumstances and conditions of the traffic make necessary to use.

Cross-examination.

By Mr. HILL:

Q. Mr. Doddridge, when did you say you quit the railroad service?

A. I quit the service of the Missouri Pacific Railroad in the year 1900.

Q. Have you had any practical railroad operating experience since that time?

A. Yes; that is, I have not had a position of that character since then, but I have had more or less railroad work continuously since then.

Q. What was the nature of the work?

A. Well, I was connected with a Tennessee Railroad; I built a road over in Tennessee, about thirty miles long, and spent one year at that.

Q. That was not operation, that was construction, was it not?

A. It was both construction and operation. We were operating some railroad over there at the same time.

1355 Q. It bursted, did it not?

A. Yes, I believe it did. I left it, anyway, before it happened.

Q. Was the bursting on account of your leaving, Mr. Doddridge, or other causes?

A. I don't know; I can't tell you.

Q. What other railroad experience have you had since 1900?

A. Well, sir, I spent a couple of years surveying a trans-continental line to the Pacific Coast.

Q. That was not operation, was it?

A. No sir; and I made examinations for certain people of a number of railroad properties, and made reports on them. In other words, I have been engaged in special railroad work, but not direct operation.

Q. You were employed by the Missouri Pacific in the Missouri rate cases, were you not?

A. Yes.

Q. You attended practically all of the sessions of that hearing, did you not?

A. I attended a great many of them; I did not attend all of them, but a great many of them.

Q. You were in constant attendance at those hearings, though, whether in daily attendance or not?

A. Yes.

Q. You acted in an advisory capacity towards the counsel and the other expert witnesses in that case, did you not?

1356 A. I acted as an advisor to the counsel and discussed some of these questions with a good many of the witnesses.

Q. You have occupied the same relation in this case, have you not?

A. Well, yes, but I have not had any conferences with any witnesses in this case.

Q. You have attended all of the sessions of this hearing, I believe, have you not?

Mr. MOORE: He means before the Master, Mr. Doddridge.

A. Yes, in St. Louis, since you have been here.

Mr. HILL:

Q. You have followed very closely all the testimony given?

A. Yes.

Q. And taken notes of it?

A. No, I have not taken any notes, that I know of.

Q. Is not a good part of your testimony that you have been giving, a copy from your Missouri case testimony: have you not read from that here?

A. I have been engaged by the railroads (since the Van De Vanter injunction), more or less in this case; following it up and making examinations of statistics and figures, with a view of qualifying myself in the premises; and the general conditions underlying the handling of local and through business are the same, whether it is in the state of Missouri or Arkansas and so, of course, in testifying as an expert on that line, I would naturally use the same
1357 general expressions and reasons as in the Missouri case.

Q. I am not criticising you for using it; I am just asking if it is not a fact?

A. I did not copy this from anything in the Missouri case, because I haven't a copy of the testimony. It is my memory——

Q. It is substantially the same?

A. Yes, it is substantially the same.

Q. You have made various additions to your former testimony about matters that have been brought out in this hearing, have you not?

A. No, I don't know that they have been brought out—I say I have not followed the Missouri testimony. I have changed my views somewhat since that testimony was given, which is over a year ago.

Q. On what have you changed your views, Mr. Doddridge?

A. Well, for instance, in the Missouri case the preparation dealing with these various elements was not as clear as it is made now. While in our testimony in that case we covered the same ground, we did not state it in the same precise way.

I think in this case the elements of extra cost are more clearly expressed.

Q. Do you mean in fact, or in the languge of the witnesses?

1358 A. You asked me if I had improved or added to my testimony that I gave in the Missouri case, and I say that it is given after more consideration, and, I think, in better form.

Q. In other words, you are better satisfied with your testimony that you have given here, than you are with that given in the Missouri case?

A. Yes.

Q. You have also been employed by the railroads to represent them in this same capacity in the Oklahoma rate cases, have you not?

A. Yes, sir, but I haven't represented anybody——

Q. You haven't got to that point yet?

A. No sir.

Q. You expect to do so, under your employment?

A. I expect to do so.

Q. You made an affidavit before Judge Van De Vanter when this injunction was obtained, did you not?

A. Yes sir.

Q. I want to call your attention to this statement:

"The difference in the expense of conducting intrastate and intertsate passenger traffic is not so great as it is in freight traffic, but there is no doubt that the expense of carrying intrastate passengers is from fifteen to twenty-five per cent greater than the cost of carrying interstate. I say that fifteen to twenty-five per cent because I desire to be conservative in my estimate. My opinion is that the excess cost is not less than twenty-five per cent."

1359 I notice in your testimony this morning you have raised your sights a little, have you not?

A. Yes sir.

Q. Is that the result of your later investigation into——

A. Yes sir, giving the matter more careful attention.

Q. It has gone up above five per cent, then, in a year, according to your opinion?

A. No, I don't think it has gone up. I think it is the same as it was a year ago, but I don't think I understood it so well then. I think I am better qualified to say twenty to thirty per cent now, than I was at that time.

Q. You haven't done any operation since that time?

A. No, but I have had a chance to examine statistics. I understand what the statistics mean with reference to operation.

Q. I want to read you another statement from that affidavit:

"That class of business which I would term trans-state shipments is the least expensive of all the traffic conducted by railroads. The trains are made up to the full capacity of the locomotives and cars. As a rule, they make good time, having precedence over all other classes of freight trains, and the crews run, without break or interruption, the full length of the run allotted to them."

Is that a correct statement of the trans-state business?

A. I think it is correct as far as it goes, Judge.

Q. Is this particular statement that "the trains are
1360 made up to the full capacity of the locomotives and cars" a correct statement?

A. Not always.

Q. Not generally, either, is it?

A. Well, generally, in one direction at least.

The sense in which "trans-state" freight is used there means the interstate freight and through service and through trains.

Q. I think not, Mr. Doddridge. If you will look over this affidavit, you will see that it is making a distinction between trans-state and other interstate business, because it goes on——

A. Trans-state is interstate.

Q. Certainly it is, but you are distinguishing your interstate there into trans-state; by that I presume you mean interstate that has a terminal in the state, as contra-distinguished from the interstate that has no terminal in the state.

Mr. MOORE: What is the statement you made just now?

Mr. HILL:

Q. Do you think this statement that trans-state is loaded to the full capacity of the locomotives and cars, is a correct statement?

A. As I stated in answer to the previous question, as a general proposition, yes. Of course, there might be an unbalanced movement of the traffic that would load those trains light one way, which would make a difference.

Q. You heard Mr. McPherson's testimony that something like three per cent of the entire traffic of the Iron Mountain was live stock and perishable freights, did you not?

1361 A. I did not have livestock or perishable freight figures in mind when that affidavit was drawn, and——

Q. I believe it is a little under three per cent that he stated it, if I remember correctly.

A. (Continuing:) —while that class of trains are loaded, as Mr. McPherson stated, fifteen per cent under the potential capacity of the engine—taking into consideration the time that that train is expected to make, I should say that that train was really loaded to the potential capacity of the engine.

Q. The capacity of cars are loaded to about sixty-five per cent, are they not?

A. I don't remember about that.

Q. Is it not in the testimony from him, that about only three per cent of the stock cars are returned loaded?

A. About three per cent?

Q. Yes.

A. Returned loaded after moving another lot?

Q. Yes.

A. That is, there is 97 per cent empty car mileage?

Q. Forty-seven per cent, counting fifty per cent carrying load; three per cent returned loaded, and forty-seven per cent returned empty?

A. That varies under certain circumstances and conditions. I think I can give you an explanation that will give you what

1362 you are thinking about in the matter of the underloading of trains.

I notice that Mr. McPherson in his testimony left out the element of time in his calculations, which is an essential element in considering a question of that kind.

A train that is expected to make an average speed of 25 miles an hour pulling freight, as compared with another train that is expected to make an average speed of 15 miles an hour (which is the potential capacity that the locomotive stands), while the locomotive is underloaded fifteen per cent as against the 15 mile schedule, she is fully loaded as to the 25 mile an hour schedule.

Q. Let us talk about that time element a little bit.

A. That is an explanation, you know, of what is meant when we speak about a train being fully loaded——

Q. When you are handling this trans-state livestock and trans-state perishable stuff, don't you have much idle time of your engines, waiting for trains at the division points?

A. That depends entirely upon the management of the road, and the care with which those matters are adjusted and arranged.

Q. Did you not hear the testimony of Mr. McPherson, quoted from the Texas Cattle Dealers' case, to that effect?

A. No, I don't think I paid much attention to that; I did not notice, particularly.

1363 Q. That is a fact, though, that that occurs in that kind of traffic?

A. Sometimes I guess there is, in the cattle business.

Q. The same thing would be true in the perishable freight business, would it not, but possibly in a lesser degree?

A. I don't think it would be so great, because those fruit trains would probably——

Q. That enters into it, does it not?

A. To some extent, yes.

Q. Another element of time has been testified to by Mr. McPherson, in the Cattle Dealers' case: that these fast trans-state trains lay out the local trains and cause them to lose time, and for their employés to earn overtime; that is a fact, is it not?

A. Well, that depends entirely on the transportation management of the railroad; it may be a fact and it may not, on a well managed, good trunk line railroad——

Q. You heard Mr. McPherson's testimony to that effect, as quoted from the Texas case, did you not?

A. I may, in a general way, but I did not pay strict attention.

Q. He ought to know whether or not that is a fact on the Iron Mountain road?

A. I think so, yes, sir; if he said so I have no doubt in the world that it is so on the Iron Mountain Railroad.

Q. If you don't recall it I will give you the quotation

1364 from the testimony here.

A. I don't recall it in particular; I paid but very little attention to it.

Q. Well, we will assume that he stated that; the record shows. That would be a fact, then, that that is an element of lost time?

A. Yes.

Q. That would be charged to that trans-state train, at least partially, if not wholly, instead of being charged to the local train, would it not?

A. Yes, that would be part of the expense, really, of the fast train and chargeable to it.

Q. Reading from affidavit:

"As a rule, they make good time, having precedence over all other classes of freight trains, and the crews run, without break or interruption, the full length of the run allotted to them.

In that class of transportation the trains, as a rule, carry loads in both directions and those carrying revenue producing tonnage. The amount of dead tonnage, such as empty cars and partially loaded cars, is very small on that class of trains and which circumstances very materially reduce the cost of operation as compared with every other class of freight traffic."

Now, I ask you if it is not a fact that livestock, perishable
1365 goods (and by that I am including fresh meats, and things of that kind), coal and oil, are not large elements in trans-state shipments?

A. Well, if the livestock is but three per cent, I don't think there is a great deal of coal contemplated in that statement.

Q. Don't you handle a lot of coal from Illinois to Louisiana and Texas?

I did not say the livestock was three per cent; I said the livestock was a little short of three per cent——

A. It is a part of the trans-state business——

Q. Now I have added coal and oil to that.

A. I presume there is a large amount of that kind of business moving as trans-state freight, but——

Mr. MOORE: I want to call his attention to the fact—as you have called his attention to the percentage of the perishable goods—that, as I recall it, Mr McPherson said there was very little of that Illinois coal shipped on the Iron Mountain road, and gave the reason for it. I call attention to that now, to save going back to it on re-examination.

Mr. HILL:

Q. Is it not a fact that these various items we have mentioned, livestock, perishable goods, oil and coal, are shipped in cars where there is the least return movement of any other class of freight; filled movement, I mean, I don't know the technical term. Perhaps I should have said loaded movement.

1366 A. I think that is correct as to livestock, but I am not certain as to the coal cars that go down to that southern country. I think they are, partially at least, loaded back with products of the forest; oil cars, of course—if you refer to tank cars?

Q. That is what I mean.

A. They run one way empty, I presume, all the time; they make 100 per cent of empty car mileage.

Q. The refrigerator cars are very near the same?

A. During my administration, we loaded refrigerator cars when

we could, with certain kinds of freight, but in the movement of a refrigerator car it is necessary to return it to the shipping point within a specified time, and if we could not find a load for it, it went back empty.

Q. I believe Mr. McPherson put that about forty per cent empty. I suppose that would be correct?

A. I suppose the same system is in vogue now.

Q. I think he put the coal car movement at thirty-five per cent, empty.

A. I don't know; I was not paying attention. I know that the coal cars are loaded back, part of them, but——

Q. It would be something like that; would that be your judgment?

A. I should judge that was right.

Q. Taking that in connection with the matters to which I have called your attention, can you not state that these classes of
1367 trans-state freight that I have mentioned, have a larger empty return movement than any other class of freight?

A. I guess that is true, in a general way.

Q. That is a large factor in determining the cost of the different classes of freight, as between trans-state, interstate and intrastate, is it not?

A. Of course, it enters into it, but in determining the differences I, of course, do it by a general system of averages.

Now, you selected certain kinds of freight that are carried in cars for which there is no back loading; if there was, of course those cars would be loaded; but taken in its entirety, I don't believe it affects the grand result very much.

Q. It does affect it some, though, doesn't it?

A. It does some, yes, sir, as far as it reaches.

Q. I understand you predicate your judgment on the extra cost, largely upon the short haul in the state, and two terminals: is that correct?

A. I predicate it on the circumstances under which the business is handled; the relative length of the haul, and the double terminal cost; the necessary use of extra equipment; it produces an equivalent number of ton miles.

Q. That all goes to the length of haul; is it not included in that proposition?

A. It goes to the length of haul, yes; and then there is a corresponding additional use of motive power, on account of the circumstances under which the business is handled; the fact
1368 that the bulk of the state business is on the local train, and the local train engine and crew does the station switching along the line. That contracts the length of the daily run. Then, the character of the business requires it to be done in daylight. It cannot be done continuously, day and night, as the other business is handled.

It is all those elements (and perhaps some others, that I have not thought of), that go to make up the difference in the ratio of cost.

Q. What do you estimate the terminal cost per ton to be?

A. I cannot qualify on that, as I have no figures whatever.

Q. Did you not testify in the Missouri case that you put it at about ten cents per ton?

A. I don't remember; I might have; I filed in the Missouri case—I will make this statement, that I obtained certain information from tests which we made on that road, and filed an exhibit giving the results of that test, and if that is in my evidence, that is what it amounted to. That would be the station cost, I take it——

Q. Was not that yard expense this terminal, like Kansas City and St. Louis?

A. As I remember it we did not figure up——

Q. I will look that matter over. I may not have it right.

A. I was going to say that we did not figure up the total
1369 terminal expense.

Q. You have put in here, fifteen and twenty per cent: I presume you mean for operation?

A. Of the total expense of operation.

Q. What do you mean by your term "operation" in the technical sense?

Mr. MOORE: You are speaking of his statement, that the terminal expense was fifteen to twenty per cent?

Mr. HILL: Yes; I want him to define the term "operation."

A. The term used there—the sense which I give it, means the total expense of operation as shown as the operating expenses of the railroad in Arkansas.

Q. It does not mean transportation?

A. No.

Q. You mean a broader term than "transportation?"

A. Yes.

Mr. MOORE:

Q. Do you mean the total, or total freight expenses?

A. We are talking about the total expenses, because the passenger has terminals, as well as the freight.

Mr. HILL: We are talking about freight now. We will take up passenger later.

Q. I want to call your attention to the fact that this would necessarily differ in Missouri and Arkansas.

A. The conditions are very different, yes sir.

Q. There are no terminal expenses in Arkansas that would compare with those in St. Louis, Kansas City, and St. Joseph,
1370 are there?

A. The terminal expenses in the state of Missouri are much greater than they are in the state of Arkansas. As I remember, the terminal expense in Missouri is twenty-five per cent of the whole, as given in the testimony in the Missouri case.

Q. And you reduce your estimate here from fifteen to twenty?

A. I reduce it in Arkansas; I would say not more than fifteen or twenty. I don't know exactly; I am estimating it.

Q. I want to ask you about the physical condition in Arkansas: you have heard it developed here that all of the traffic going into Arkansas from Memphis is interstate, but it is charged up here as an operating expense of Arkansas.

You have also heard it brought up that Fort Smith is an interstate point.

I want to call your attention to that fact, and ask you if it is not a fact, if (owing to all the interstate traffic in and out of Memphis and in and out of Fort Smith having two terminal expenses incurred in Arkansas) there is a different situation presented on this question there, than there is elsewhere?

A. There is a different technical situation.

Q. Let us see if it is technical. You and Mr. McPherson both used that term.

1371 You have charged that as interstate business here. It is treated as interstate business and the earnings are carried into the interstate account. You have interstate freight here that you say has only one terminal, while as a matter of fact, all of your interstate freight entering Arkansas from Fort Smith and Memphis, has two terminals in the state.

A. I should say that if the earnings and expenses are treated in the accounts as you state, that that part of the interstate business—that that percentage of it, whatever it may be, would be chargeable to two terminals.

Q. You heard Mr. Roth and Mr. Johnson state here, that that was treated in the Iron Mountain, as I have stated, did you not?

A. Well, I don't suppose there is any question about it if you say so, because that is simply a question of bookkeeping, and under those circumstances it has——

Q. Their exhibits show that; there is no dispute about that, I take it, Mr. Moore, is there?

Mr. MOORE: I suppose not.

Mr. HILL: There is no use hanging on a point that is admitted by everybody.

Q. Taking that as settled, then, it is not a technical distinction as you and Mr. McPherson are seeking to make it?

A. What I mean by the word "technical" is this:

To all intents and purposes, Memphis is legally an interstate point, as I understand it; but practically, from a phys-

1372 ical operating standpoint, it has all the attributes of a local terminal to Arkansas, because there is no mileage connected—there is no railroad connected with it that makes any earnings, except the lines in Arkansas.

Q. To make that sort, I agree with you entirely, that it is technical as a legal proposition, but as a practical proposition you have treated that in your case here as interstate shipments, and necessarily so——

A. I did not understand that to be the case with the local Arkansas shipments.

Q. Every shipment in or out of Memphis, and in and out of Fort

Smith, except the shipment from Greenwood to Fort Smith, are interstate shipments in these exhibits.

A. I did not appreciate that.

Q. I did not suppose you did and that is the reason I want specifically to call your attention to it. If you are not satisfied with that, there is Mr. Johnson; ask him if that is not a fact.

A. I am perfectly satisfied with your statement, Judge, as to my answer; because if that is a fact, then of course that business, as far as it goes, has two terminals in the state, although it is an interstate movement.

Q. That is the point I am getting to: now with two terminals in Arkansas, on the volume of business passing through Memphis, and the volume of business in and out of Fort Smith (with the trifling exception of the Greenwood business), don't you have to
1373 modify your estimates on the comparative expense of interstate and intrastate business in Arkansas?

A. So far as it would be affected by that particular thing, but of course, I based my estimates on the figures and the lengths of hauls that have been submitted.

Q. I understand your general proposition. I don't think this interferes with your general proposition, except that we are meeting a practical situation and I want you to apply your views to a practical situation, not to theoretical ones.

A. I don't know what that would amount to, that traffic as applied to the whole traffic of the state of Arkansas, and my statement as to the extra cost has a varying limit, and it is only an approximation of general judgment, at best. Therefore, I don't think that that would affect it very much, unless on——

Q. Don't you know that the traffic from Memphis and Fort Smith to Arkansas, is a very large volume of traffic?

A. I judge it is; I suppose so.

Q. Isn't Memphis the largest distributing point for the state?

A. I don't know that.

Q. It was when you were operating over there, wasn't it?

A. No, I think not. I think Little Rock was a larger distributing point than Memphis. Of course, Memphis has grown very much since then, ten years ago.

1374 Q. You are familiar with Fort Smith, particularly as to the manufacturing industries there, in the last ten years? You see, I am from Fort Smith, Mr. Doddridge, and I can't omit putting in something about the growth of the city.

A. Well, the truth of the matter is that all of that country and all of the towns, have developed very much.

Q. Without knowing the exact percentage, you know there is a large tonnage out of Memphis and out of Fort Smith, do you not?

A. Yes sir, I suppose there is; there is no doubt about that.

Q. Is it not such a tonnage as would materially affect the traffic of the state?

A. Yes, I suppose it would.

Q As to the extent of that traffic, there are two terminal expenses

incurred in Arkansas, and as to that traffic, there can be no difference in respect to the terminal cost, than your intrastate traffic?
A. No, so far as the terminal expenses are concerned.

Mr. MOORE:

Q. Have you any idea of what the terminal expense on freight shipped out of Memphis is, Mr. Doddridge; have you any knowledge or idea of what the proportion is, to the ton?
A. No sir.

Mr. HILL:

Q. You say you made a test on the Cotton Belt—in October, 1908, was it?
A. The Cotton Belt Company made a test.
1375 Q. under your direction?
A. Well, no, under Mr. Kimbell's direction.
Q. You had a hand in it, didn't you?
A. Yes sir, I had something to do with it; I wanted the test made.

Mr. MOORE:

Q. What did you have to do with it?
A. I say, I simply wanted it made to determine——
Q. You mean you suggested it?
A. Yes.

Mr. HILL:

Q. Do you think the test of one month's operation would be fairly representative of the entire year?
A. I think in this case that it would be representative as to the relative proportions of the different kinds of business, for the reason that the month of October, 1908, was one of the heaviest months of the year, and considerably above the average twelve months, probably.
The main purpose in making this test was to determine the average relation that one class of business bore to the other, and if the business of the road was lighter in a subsequent month, the chances would be more than likely in favor that the relative proportions would remain pretty near the same.

1376 Cross examination of W. B. DODDRIDGE, continued as follows:

By Mr. HILL:

Q. Mr. Doddridge, you have spoken of the classification of freight; the classification made on account of the difference in the classes carried.
I will ask you if this is not a fact: that the classification of freight moving in all territory west of the Mississippi River is governed by the western classification unless otherwise provided?
A. Yes, sir, I so understand it.

Q. The exceptions to the general rule are always local, aren't they?

A. I think you are right, although I am not familiar specifically with the practices in that respect.

Q. The minimum weights of carloads are also fixed by classification, aren't they?

A. I think they are.

Q. Is not this classification reasonably stable and in the main it has been fixed for many years?

A. Yes, sir. It is a growth of 35 years, to my
1377 knowledge, in the western country.

Q. For the last ten years, you might say, the changes in the western classification have been minor, and to meet a local difficulty here and there: isn't that a fact?

A. It has been revised along from time to time. I remember to have used the western classification in the seventies, on the Union Pacific Railroad.

Q. But the part I am getting at is this: in its main features, the main classification, have been stable, say for the last ten years, with just sum minor exceptions as are necessary to meet some local conditions here and there: isn't that a fact?

A. As a general proposition, I think it is, although I am not sufficiently familiar with the changes that have taken place in the western classification to testify with exactness on a point of that kind.

Q. But what I have stated is the way you understand it.

A. Yes, sir, that is the way I understand it.

Q. The great bulk of the traffic is moved under the western classification, and under its minimum, isn't it? I mean the great bulk of the traffic west of the Mississippi River?

A. I so understand it, yes.

Q. The classification of commodities affect materially the rates, do they not?

A. Yes, sir.

1378 Q. And, necessarily, the revenue?

A. Yes, sir. It is a part, really, of one of the methods of making the rates.

Q. Suppose while the western classification as to interstate traffic is unchanged, the Arkansas Commission should take out of the western classification various articles and add them to the commodity list, thereby resulting in a reduction of revenue on the intrastate traffic, then, would it not follow under your revenue theory that there would be a proportionate decrease of expense charged to the intrastate traffic in the division of the expenses of traffic between intrastate and interstate?

A. That would be the effect, yes, sir.

Q. Suppose there was a decrease by the Commission of the minimums of carloads, it would have the same effect, wouldn't it?

A. Yes, sir.

Q. East of the Mississippi River there are several classifications in effect, aren't there, instead of all being governed by one classification?

A. There is at least one or two classifications east of the river.

Q. Aren't there several more than that?

A. There may be. I am not informed as to that.

Q. You have operated in Tennessee; what were you governed by there?

1379 A. The road I operated in Tennessee was a local property and was handled under the local classification; and I do not know whether it was——

Q. Was not that an adaptation of the southern classification to meet your local conditions?

A. I suppose so.

Q. Is not the official classification east of the river? Are you familiar with that?

A. No, sir.

Q. Applying in central association and trunk line territory?

A. I am not informed as to the particular details in that respect.

Q. Are you informed of the southern classification, south of the Ohio and the Potomac Rivers?

A. I know there is such a classification.

Q. Are you informed as to the Illinois classification applying in Illinois and Wisconsin?

A. No, sir.

Q. You do not know whether these have a fixed classification in all of them, or whether they vary materially?

A. I know the classification east of the river, the so-called southern classification, is different from the western classification, and it arises out of a necessity to meet the conditions that prevail in those sections of the country and the different character of the traffic handled.

1380 Mr. HILL: Mr. Flippen is here, Colonel Moore, and if you have no objection I would like to ask him what classifications prevail east of the Mississippi River. Just in this connection I would like to get that information.

Mr. MOORE: I have no objection to your asking Mr. Flippen.

Mr. HILL:

Q. Mr. Flippen, I wish you would explain what classifications exist east of the Mississippi River?

Mr. FLIPPEN: In the territory east of the Mississippi River and south of the Ohio, the southern classification prevails.

In the territory north of the Ohio River and east of the Mississippi River, on general interstate traffic, the so-called official classification prevails.

You have in the state of Illinois what is called the Illinois classification, which applies on strictly local traffic. It is approved by the Illinois Railroad and Warehouse Commission.

Q. That applies in Wisconsin too, doesn't it?

A. I don't think it does. Wisconsin may have a separate classification on intrastate traffic, but I am not informed definitely on that. I do not think the Illinois classification applies in Wisconsin. In fact, I am quite sure it does not.

The official classification is the one that generally prevails in the

territory north of the Ohio River and east of the Mississippi
1381 River. And the western classification prevails west of the Mississippi River to the Pacific Coast.

Q. These classifications differ widely?

A. Not necessarily.

Q. I am not asking about necessarily but as a matter of fact?

A. No, sir.

Q. They do not?

A. No, sir, they do not.

Mr. HILL:

Q. Mr. Doddridge, when the Iron Mountain road is one of several connecting carriers,, say is the middle carrier on trans-state freight, in its division of the earnings of that particular trans-state freight with its two connecting carriers, one at either end, is it charged with the terminal costs that are incurred by the other carriers at either end?

A. I am not qualified to answer that question definitely, as I do not know the method of divisions between the lines.

Q. Did you not testify in the Missouri Rate case that the rule was that it was not charged with it; but you thought it would only be fair if it was?

A. In some cases the terminal charge is first taken out of the rate, weher there are conditions that justify it; and I do not remember the testimony I gave on that point in the Missouri case; but I do remember the practice that existed.

1382 For instance, between Omaha and San Francisco, where a terminal charge was taken out at Omaha and a terminal charge taken out at San Francisco; as I recollect it, it was 5 cents a hundred pounds. And I think it was a proper charge in that case, and I presume I had that in mind, or something similar, if I testified on that point in the Missouri Case.

Q. It seems to be understood here, in both the question and the answer given in the Missouri Case, as I read it, that the middle road in the illustration I gave you would not bear any part of the terminal expense. But, you are testifying here that it would be only just to do it: is that correct?

A. That it would be only what?

Q. Only just to do so.

A. If the circumstances and conditions were such as to justify it. Where some extraordinary condition obtains, as in the case I cited, between Omaha and San Francisco, where there was a special expense in transportation, the railroads first took that out, for the purpose of compensation; and in such cases I would say it would be proper to do that.

Q. But, as a matter of fact, in such an illustration as I give you, there is no division made of terminal expense, is there? The rate would be divided on a mileage basis between the three roads.

A. That I understand to be the ordinary method.

Q. That is what I am getting at. I am speaking of the ordinary, general rule, and not of exceptions.

1383 A. Yes, but as to the exact practice prevailing on the Iron Mountain road in the division of its rates between connecting lines, I am not informed as to the details.

Q. I am asking as to the general proposition. That is what I am getting at, the general proposition. It is ordinarily divided, in the illustration I gave you, upon a mileage basis, without consideration of the terminals?

A. That is true, I think, as an ordinary proposition.

Q. Of course, we can wander into a great many exceptions to every-

A. I think you are right, as to the general practice.

Q. See if I state this proposition correctly:

The long and short haul clause of the interstate law, as construed by the Interstate Commerce Commission, permits cheaper rates at competitive points, like St. Louis and Memphis, while authorizing higher rates at intermediate points?

A. I so understand the proposition.

Q. Much traffic and travel is handled in that way, isn't it?

A. Yes, sir.

Q. In fact, a very considerable portion of the entire interstate traffic is handled upon that principle, as I have stated it, isn't it?

A. Yes, sir.

Q. This is particularly true in the Mississippi Valley, where they have competition with the Mississippi River, the Arkansas

1384 River, the Ohio River and other river points, isn't it?

A. Yes, sir, I so understand it.

Q. Does that traffic so handled reflect the cost of service, do you think?

A. I don't just understand what you mean.

Q. I mean, going back to your proposition, the different earnings from the traffics, where the tariffs are arranged in that way, do they reflect the cost of the service performed?

A. It does not reflect the cost of the service with exactness, or what I mean is the relative cost of the service, in a regular ratio.

The cost of the service, of course, is considered as one of the factors in the making of rates.

Q. It is not, when you meet river competition, is it?

A. It is one of the factors. There is compensation in some direction?

Q. But not in the rate?

A. That amount is the first or prime reason.

Q. I understand. For some commercial conditions or——

A. Other conditions are supposed to compensate in a measure; or what I mean to say is, the individual cost or the physical cost of a shipment is not the prime factor in the making of the rate.

Q. But that is especially true of competitive rates; it is a less factor there than anywhere else, isn't it?

1385 A. That is the reason why that condition exists. It is on account of the competitive conditions.

Q. When you come to fix competitive rates, particularly such as at Memphis and St. Louis, the cost of the service is really a negligible quantity, to use Mr. McPherson's word, isn't it?

A. Not to take the traffic as a whole.

Q. I understand your position, but I am speaking of fixing the rate itself.

A. That particular rate, of course, the physical cost of the transportation of that particular commodity or shipment is not the prime moving factor; it is a secondary consideration, but there is a compensation.

Q. You might say it is a negligible consideration, when you come to meet the competition at such points as I have named.

A. It depends upon what the word "negligible" means. I do not mean to say the cost is altogether ignored; that is what negligible would mean.

Q. I believe you stated in the Missouri Case that the cost between state and interstate traffic on the Missouri Pacific Railroad could not be accurately determined without using an arbitrary percentage, based on opinion and judgment: is that correct?

A. That is true, yes.

Q. You regard the revenue theory, then, as an arbitrary
1386 percentage based upon opinion and judgment, do you not?

A. Yes, sir.

Q. I believe you also stated in that case that it was not accurate: did you not?

A. Yes, sir.

Q. And you said it was not scientific?

A. No, sir. I do not think it is scientific.

Q. But still it is right?

A. It is the best method or plan, in my judgment, for the purpose, which has been suggested.

Q. Well, the only purpose I know of its being used for, so far as I have been able to discover, is a litigation purpose: it is not used for anything else, is it?

A. It has never been necessary to ascertain definitely or accurately the difference in the cost of transportation as between the state and interstate traffic, divided by state lines. It has been always considered as between the through and the local business. It has been figured in numerous ways, for practical purposes or for practical reasons.

For instance, suppose the question of reducing the grade lines of the railroads came up for consideration and an estimate was made as to the cost of bringing the potentiality of the railroad, say from a one and ½ per cent maximum grade to a .5 per cent grade. To know definitely whether an investment of a certain amount of
1387 capital would be justified in bringing about this changed condition, the effect that would be produced by such an investment would have to be known.

For purposes of that sort, and investigations as to the relative cost of the two classes of traffic have frequently been made.

They were made upon the St. Louis, Iron Mountain & Southern Railway by myself, prior to the rate reduction which took place in the last seven or eight years.

And then it is in the economies of operation, transportation officials necessarily keep track of these differences in conditions, where the traffic officials of railroads looking at the general results would

not pay very much attention to the differences in the physical cost, in the details. They deal with those questions more as looking to the aggregate results.

Q. I don't know that I follow you: do you mean to say you keep this revenue theory in the form of statistics?

A. No, sir, I did not say that. I said when it became necessary to ascertain the relative differences in the cost, divided by state lines, which grew out of the state regulation of railroads, then some plan or system was necessarily invented for arriving at the results.

Q. That is what I asked you, if this was not used purely for litigation purposes?

A. Yes, sir. This method was developed in consequence of litigation and state regulation.

Q. Probably I should have made my question a little
1388 broader and included state regulation. If I had done so, that would have been right?

A. I have answered the question at length and given it as I understand it.

Q. The revenue theory is used for no other purpose than that?

A. No, sir. I think it is used for other purposes under some circumstances, but in making a division of expenses or arriving at a division of expenses upon a railroad as a unit, I do not know that it is used.

Q. I want to call your attention to this statement in your testimony in the Missouri case, about the ton mile theory:

The question is "the ton mile theory is valuable and is used frequently, is it, as a method of comparison."

A. "It is used for the purpose of testing, perhaps, the efficiency of operation of a railroad. It deals only with the revenue part of the business, the freight. Of course, the freight carried produces a certain kind of product and when it is measured where there is no necessity for making a distinction between one kind of freight and another kind of freight, the ton mile does very well."

Is that correct?

A. I think that quotation is not exact as you read it.

Q. Look at it.

A. (The witness here examines the original record re-
1389 ferred to).

Q. You have read that? Is that correct?

A. Yes, sir.

Q. Is there any explanation you would like to make of it?

A. I believe I would like to have that before me. (Witness examines record referred to.)

This answer is correct with the exception of the word "revenue" part of the business means the freight. The answer I think is obscure as to just what it means.

Q. Read the whole sentence there. I think it is clear.

A. It reads: "Q. The ton mile theory is valuable and is used frequently, is it not, as a method of comparison?

"A. Yes, it is used for the purpose of testing perhaps the efficiency of operation of a railroad. It deals only with the revenue part of the business, the freight.

Of course the freight carried creates or produces a certain kind of product and when it is measured, where there is no necessity for making a distinction between one kind of freight and another kind of freight, the ton mile does very well."

Q. Here is another statement taken from your testimony given in the Missouri Case:

"Q. And that is why, Mr. Doddridge, the accountants and statisticians and railroad managers resort to average results on all business for a considerable period of time? If the expense was
1390 the same, and the revenue was the same, in every instance, there would be no necessity for averages, would there?

A. No, sir.

Q. Those statements of the average cost per ton mile, I believe were made up more for the purpose of testing the general prosperity of the railroads, or more for financial reasons than for operating reasons: is that correct?

A. Yes, sir."

You affirm the correctness of that statement of the use of the ton mile statistics, do you?

A. Yes, sir, as given there.

Q. Just what do you mean by "financial reasons."

A. I would take it in that case that I meant if a railroad reported last year that it earned a certain revenue per ton per mile, comparing that with the previous year, or several years, it would indicate the general trend of the business.

It would not necessarily indicate that the rates were higher or lower, but because this unit is affected by the classification of the tonnage which the railroad has handled.

And the revenue per ton per mile might be shown higher when, as a matter of fact, the general rates were lower; or vice versa.

The revenue per ton per mile depends not alone upon the volume of the business or of the rates charged but it depends largely upon the kind of business.

1391 Referring to the Arkansas railroads and to the statistics that have been filed in this case, the revenue per ton per mile for the Cotton Belt is entirely different in its figure from that of the Iron Mountain; and yet the two railroads traverse the same sections of country, in a large measure.

Q. The cost of operation of the two are different, aren't they?

A. Yes, sir. The same elements come in and affect the cost of operation, but there is a difference in the character of the tonnage of the two lines which creates the difference in the revenue or cost per ton per mile.

Mr. MOORE:

Q. Gross revenue, you mean?

A. Yes, sir, the gross revenue.

And the ton mile unit in that case, applied either to the revenue or to the expense, is the average unit and does not mean very much when it is applied to certain purposes.

Q. Applying this question of the volume of the traffic to your local and through trains, your intrastate and interstate traffic, take

it any way; isn't it a fact that they carry the same variety of traffic and, generally speaking, in the same relative proportion, the essential difference being in the length of haul, and the double terminal, as chargeable to the intrastate traffic?

A. Where the volume of traffic of the various commodities is about the same, the main difference arises from the length of the haul and the terminal expenses.

1392 Now, conditions, for instance, on the St. Louis Southwestern Railway and the Iron Mountain road——

Q. I am not comparing the difference between two roads. You take it now on the Iron Mountain road, the traffic, intrastate and interstate is practically the same—I mean the variety of traffic, the kinds of traffic. Whether it is divided into intrastate or interstate, it is still essentially the same kind of traffic.

A. In its general character it is the same kind of traffic.

Q. Of course, the traffic will differ on the Iron Mountain and the Cotton Belt in a measure. And take it on the Southern Pacific it would differ still more: but I am speaking of the Iron Mountain in Arkansas now. The character of its traffic is the same, whether that traffic is interstate or intrastate, isn't it?

A. Well, I would except the coal business on the St. Louis Iron Mountain & Southern, because you have no coal traffic on the St. Louis Southwestern, of any volume.

Q. I was telling you particularly not to compare one road with another. I am talking about the St. Louis, Iron Mountain & Southern Railway.

A. The general average of business conditions of both roads is quite similar, except as to volume and details.

Q. You evidently do not understand my question. It is this, Mr. Doddridge:

1393 Take the St. Louis Iron Mountain & Southern Railway alone, is not the traffic on that road the same kind of traffic, whether it is intrastate or interstate?

A. Yes, sir, it is the same kind of traffic.

Q. And take it on the Cotton Belt road, the traffic on that is the same whether it is interstate or intrastate: there is no difference in the traffic made by passing the state lines, is there?

A. Not a bit.

Q. That is the point.

A. That is correct.

Q. Your analysis of the different classes of freight, interstate and intrastate, is based on your experience and knowledge of the operation of the different kinds of trains, local and through, and the proportion of intrastate traffic carried on each, isn't it?

A. Well, the local train is simply one of the incidents of the extra cost. It is not the whole reason. It is one of the circumstances and conditions of the handling of the short haul business of the railroads.

Q. I think I have allowed for that in this question, if you will consider it more fully.

Previous question is here read.

A. Yes, sir.

Q. So we will understand terms correctly, Mr. Doddridge, in talking to each other, I will ask you if there is any such thing as an intrastate train: that is, an intrastate train which carries exclusively intrastate traffic?

1394

A. There is no such train that I have ever heard of.

Q. There may be an intrastate train, but for the purposes of our inquiry it carries interstate traffic, and has to be considered relatively as to the traffic that is upon it.

A. It carries all kinds of business.

Q. That is true also of all trains, isn't it?

A. Yes, sir.

Q. Intrastate or interstate or trans-state.

A. Yes, sir.

Q. It is a question of the proportion upon each?

A. It is a question of the proportion upon each.

Q. Can any one who has not operated the St. Louis Iron Mountain & Southern or familiarized himself with its physical operation, or who has not (like Mr. Johnson and yourself) studied it from a statistical viewpoint, give an intelligent opinion as to the cost of the intrastate business in Arkansas?

A. Well, an experienced transportation official who has a general knowledge of the conditions of traffic, can give an intelligent opinion as to the general relation in the classes of transportation, with the length of haul and the volume of business, and other things of that character being known.

As to an individual railroad, I should say his knowledge would be very limited, for the reasons that the operating conditions in detail are different upon every railroad. But the fundamental conditions are the same.

1395

Q. I believe there is a little difference between us. I wish you would listen while that question is read to you. I do not believe you quite grasped all of it.

Previous question is here read to the witness.

A. Without studying the statistics of the road, I do not think he could.

Q. I call your attention to this testimony in the Missouri Case which is right in line with that:

"In view of the complicated situation as between through and way points and division points and state lines as they run, isn't it almost necessary to have the judgment of somebody who has practically operated the property itself and is familiar with it?

"A. It would seem to me to be necessary to have that kind of judgment to get at anything like a close approximation."

A. I endorse that.

Q. Is not the only difference in cost of the intrastate and interstate freight carried on the same train, the one of the extra terminals.

A. There is no difference in the cost of one kind of freight or

another kind of freight, arising from a distinction in the terms "state" or "interstate."

If the conditions are the same there would be no difference in the cost.

1396 Q. Take freight carried on the same train?

A. Well, I say, if the conditions are the same; that is, the kind of freight, and all of the other elements that enter into it, there would be no difference arising from the terms "state" or "interstate."

But the conditions must be the same to say that there would be no difference in the cost, because there might be a difference in the conditions. The character of the freight, the weight, and other things.

Q. Take it, the same kind of freight and of the same character, carried on the same train, where is the difference, except in the terminals.

A. There would be no difference in the train cost.

Q. I want to read you your testimony in the Frisco Case: I wish to read this statement made in answer to a question:

"So far as the particular freight is concerned, carried on those particular trains, there would be no greater cost in transportation for interstate freight than state freight, except the terminal charge.

In order to ascertain the results correctly, you would have to take into consideration the amount of state freight that is carried upon that train, as applied to the total state freight carried on the other train.

In other words, what I mean to say is, we have to take into consideration all the trains and find out what relation the state

1397 freight bears to the whole." That is a correct analysis, isn't it?

A. Yes, sir, I think so.

Q. While we are on that point I want to digress a little and call attention to your testimony of yesterday on the one terminal charge on freight handled through Memphis and Fort Smith.

After going through that situation you stated that all of the interstate freight that was handled through Memphis and Fort Smith had two terminal charges in Arkansas, instead of one; as would have been the case but for the peculiar situation of those two cities.

I omitted to ask you if it was not also a fact that in that same freight which is interstate in your accounts here, and which would be intrastate but for the accident of the state line, but which incurs two terminal charges, is also freight which would have the same average length of haul of intrastate freight?

Mr. MOORE: I want to understand what is meant by that question before it is answered.

Do you mean it would, in fact as a matter of fact, have the same length of haul as the intrastate freight, or do you mean in the statistics filed here it is classed with interstate or intrastate length of haul?

Mr. HILL: I am asking as a matter of fact. To make it

1398 a little clearer, there is no difference in the jobbing freight that goes out of Memphis and Fort Smith, than that which

goes out of Little Rock or any other distributing point in Arkansas; that is the point I am calling attention to. That is, so far as length of haul is concerned.

A. Well I don't know how treating this freight as another, different class, would affect the average length of the haul.

I take it the freight out of Memphis and Fort Smith that distributes in the State of Arkansas, the length of haul would probably be the same as other intrastate freight moved under similar conditions.

Q. Then it would follow from your statement there and this statement of today, that so far as the interstate freight moves in and out of Memphis and Fort Smith, it would be as expensive as the intrastate freight of like volume that moved out of Little Rock?

A. Of like volume and conditions yes. The ratio of cost would be substantially the same.

Q. In your testimony of yesterday I find this statement (page 763):

"The use of two terminals for each State passenger, which includes ticket sellers, baggage handlers, maintenance of depots, yard service, light, heat and in some cases extra daily train service upon the main line, run especially to accommodate local traffic,
1399 increases the cost of the train service arising from the frequent stops to receive and discharge short haul passengers and baggage."

I want to ask you if ticket sellers is an expense that is incurred for a passenger at both terminals?

A. No sir. The ticket seller sells tickets at only one end, generally.

Q. That is a mistake when you included that as an item?

A. If I put it in and it reads that way, of course I did not mean it that way.

I mean in those terminals the general expense of the stations includes those various items as parts of the expense.

Q. You would have to have that ticket seller there for both intrastate and interstate passengers wouldn't you?

A. Yes sir.

Q. There would be no difference in the question of cost on the ticket seller part of the proposition would there?

A. Except for the Arkansas part of the general expense of the terminal.

Q. You have also in that quotation I have read you included the question of yard service charge as two terminals for each State passenger: there is not any yard service say between Morrillton and Plummerville is there?

1400 A. None that I know of.

Q. That is not a fair element to be included in this is it?

A. Yes sir, taking the State as a whole there is yard service in connection with passenger trains at the ends of the runs.

Q. At division points?

A. Yes sir at division points. And that yard service of course, that part of it which is attributable to passenger trains, is a part of

the terminal service and it should be included as a part of that expense.

Q. Is not that incurred by all passengers, both state and interstate?

A. Yes sir.

Q. If you did not run local trains you would have to stop your through trains to take up your local passengers, wouldn't you?

A. Yes sir, it would probably be impracticable, to make the time with the fast trains and do that business.

The reason why the local train is run, is for economical reasons.

Q. It is a feeder for the through train, isn't it?

A. Yes sir, it acts as a feeder for the through train.

Q. If you did not have local trains stopping at all the stations, you would have to devise something like a mail crane to take on and off your local passengers, wouldn't you?

1401 It is necessary to make these stops to do the business.

The stops, of course, are not made always for the purpose of taking on passengers or discharging passengers. The stops sometimes are for other purposes, such as to distribute mail and express, or to take on that character of stuff.

But the short haul business does entail numerous extra stops and these stops cost something.

Q. It is not right to charge all of that to the local train, is it, Mr. Doddridge?

A. No sir, it should be charged in proportion as the volume of business indicates. There is a proper method of doing that.

Q. It is not right to charge it all to the state passenger either, is it?

A. No sir.

Q. Such expenses as those are common in your operation, aren't they, that you stop a local train, say at Jacksonville, to pick up a passenger going to Texas, and you carry him on to Little Rock where he will catch the through train going to Texas?

A. Yes, that would be a common thing I suppose.

Q. The expenses attributable to stopping that train at Jacksonville to take up that lone fellow going to Texas, is not

1402 an expense properly chargeable to intrastate passenger traffic, is it?

A. Not in that individual case, because unless he bought a local ticket to Little Rock——

Q. Would he do that?

A. If he bought a local ticket to Little Rock, he would be properly classified as an intrastate passenger, so far as that part of the journey is concerned.

Q. I am speaking of a practical matter. He would not do that if he has his right senses, would he?

A. If he bought a through ticket to Texas, he would not.

Q. That stop would be made for that purpose, to take on that passenger to carry him to Little Rock?

A. That stop would be made for that purpose and would be properly charged against the interstate traffic.

Q. When you enumerate as one of the items of extra cost of intrastate passenger traffic these intrastate stops, it is really misleading, isn't it?

A. No sir, I do not think it is misleading because that is based upon actual statistics, actual business handled.

The statistics show that the average haul *if* the state passenger is so many miles and that the average haul of the interstate passenger is so many more miles. The difference between those two lengths of haul would seem to me to indicate the amount of extra stops necessary in the handling of the one class of business.

1403 Of course we are dealing with averages. Now the ques- would be——

Q. Isn't that getting away from my proposition there?

A. No sir, I think not.

Q. Go ahead then.

A. Now the question would be the number of additional stops required to accommodate a state traffic; and the cost of those additional stops would be the extra expense attributable to the short haul business. The exact money cost of making these stops is one of those indeterminable things which you cannot ascertain definitely:

Q. My point is this, Mr. Doddridge: the occasion of many of those stops is just such expenses as I gave you from Jacksonville to Little Rock, where the through train does not stop and the local train picks up this passenger who at some larger town takes the through train, and in that way it becomes a feeder for the through train, doesn't it?

A. Yes sir.

Q. And it is good railroading to so arrange it that way for the economical management of the through train, isn't it?

A. Yes sir.

Q. And because it is good railroading to do that, it is not right to charge up all of this to the local train, is it?

A. No sir and I do not understand, Judge, that it is so

1404 charged. Based upon passenger statistics——

Q. I understand it is charged in that way: you testified and so did Mr. McPherson, that that is one of the elements that goes to make up this extra cost.

A. That is one of the extra expenses of doing the short haul business.

Q. And I am calling your attention to the fact that there is another side to that—that is all.

A. There is, to a certain extent, and that would modify the amount charged, if you can ascertain the exact number of that kind of passengers in your local business it would reduce that expense correspondingly.

Q. You said something about the fact that there was an additional terminal expense for passengers in the State on account of a separate coach law: that applies to the interstate passenger as well as to the state passenger, doesn't it?

A. Yes sir and it should be, of course, in its application divided between the two classes of travel.

Q. Then your enumeration of this, as an additional item to charge up to State traffic with more expense, does not mean much, does it?

A. Well, yes, I think it means considerable.

The expense to provide these extra compartments in the coaches, and the expense to provide the additional accommodations
1405 at the depots in Arkansas, is quite a considerable sum.

The law requiring that was passed while I was in charge of The St. Louis, Iron Mountain & Southern Railway, as I remember it.

Q. I do not question it is quite an item of expense, both in Arkansas and Texas; but what I am getting at is this: that is an expense that applies alike to the intrastate and interstate passenger, doesn't it?

A. Yes sir, it applies to both.

Q. He is a nigger whether an intrastate or an interstate nigger, isn't he?

A. Yes sir, but that is a requirement of the State of Arkansas.

Q. And of the State of Texas also, isn't it?

A. Yes sir, I think it is in force in Texas and some other States.

Q. And in Tennessee and in all the surrounding States, isn't it?

But my point is simply this; that that negro is a negro and rides in a separate coach whether he is an interstate negro or an intrastate negro?

A. Yes sir it would apply to both classes.

Q. And hence, as an item of additional cost, it has no significance has it? We are talking about operating expenses now; we are not talking about State requirements.

1406 A. Well, in my enumerating it as one of the extra costs, I had in mind the fact that it was a local requirement and of course in other sections of the country where I have operated railroads it was not required.

Q. My point is this: that that local requirement has burdened the intrastate and interstate negro just alike, hasn't it?

A. Yes sir there is no question about that—there is no difference.

Q. "The leopard cannot change his spots" because he goes in an interstate train, can he?

A. I do not think a negro changes color.

Q. You talk about this increased casualty risk in the state traffic: what about some of your through trains having a wreck? That would be something of a casualty wouldn't it?

A. Yes sir.

Q. Very much more serious than any of your local ones, too, wouldn't it?

A. No sir, I would hardly agree to that. The increased casualty item of extra expense, as indicated in my list of extra costs, does not refer to the accidents which sometimes occur to trains while on the road. It has reference more particularly to the increased risk of handling a great number of people at and about stations.

Q. Then these casualty risks that attend the fast travel of your through trains is another side of the story that you have not measured, isn't it?

1407 A. The through trains carry of course both kinds of people, so we did not consider there was an extra risk.

Q. Don't your locals, too?

A. The locals I think carry more people.

Q. Both state and interstate?

A. Both state and interstate.

Q. Why isn't it just as right to consider these great casualties incurred by your fast trains as to consider these little wrecks on your local trains?

A. We consider that only as an element of cost that applies at and about stations, as I said before, in the number of people which are handled.

There is no difference so far as the people themselves are concerned whether they are state or interstate passengers, but it is in the number handled. If you handle five people a day you certainly have more casualties with the five than you would have with but one—the ratio.

Q. Talking about these short haul stops: what about your suburban traffic? Don't you carry them very cheap, and stop about every block or two blocks or something like that?

A. Yes, but then there is such a vast difference in the traffic density in local and suburban service.

Q. The more density you have the greater your casualty risk, isn't that true?

A. Yes sir, I think so.

Q. Then your casualty risk ought to make very high rates upon suburban travel, ought they not?

1408 A. No sir the increased density of the suburban travel is such that it is hardly comparable with the ordinary country travel.

Q. In other words, the increased density overcomes this casualty risk?

A. No sir not in the general diversified country business, it does not.

The suburban traffic in and out of a great city is carried under different circumstances and conditions from the general business throughout the country.

Q. That is getting down to details. I am talking about your proposition that the increased travel increases your casualty risk: You have an immense volume of traffic on your suburban trains, and still you carry them very much cheaper than you do any other travel at all, don't you?

A. Yes I think they do, per passenger mile.

Q. How do you square that with your theory that this increased casualty account is one of the items of intrastate extra expense?

A. Because in comparing the state local travel with the through travel you are comparing business that moves under a general similarity of conditions. When you compare that class of business with the suburban business about a large city, the conditions are very dissimilar.

1409 Mr. MOORE: Is there any suburban business in Arkansas?
A. There is no suburban business that I know of in Arkansas.

Mr. HILL:

Q. I was not referring to Arkansas, but I was trying you on the general proposition.

A. I have not got through making an explanation.

The suburban business in a large city, while it is great in number, the facilities and the protection which is thrown around that traffic to guard it against accident, and the fact that those people travel every day, and usually twice a day, educates them to the use of those trains and sets up and constitutes conditions that are entirely dissimilar.

The revenue from suburban trains—you speak of carrying them at a lower price—measured by passenger miles is low; but taking the enormous number of people that travel and considering the earnings in the aggregate, they are not as low as it appears on its face.

On account of these different conditions and circumstances, the two kinds of business are hardly comparable.

Q. Are they comparable on the casualty proposition; that is what I am asking you about?

A. No sir I do not think they are. The education which that class of travel has, and the facilities which are provided for handling it at the depots and stations where it gets on and off the trains, renders the class of casualties we are referring to remote.

1410 Q. You mean the farmer is more liable to get hurt than the city man?

A. The man who rides on a railroad only once in a great while is more apt to get into trouble and receive injuries than the man who rides every day.

Q. That is the force, then, of your casualty proposition?

A. That is one of the reasons.

Q. What about through travel to California, for instance: that is on a pretty low rate too, isn't it?

A. Yes sir the excursion rates to California are extremely low during certain seasons.

Q. About as low as the suburban rates, something like one cent a mile, aren't they?

A. Well I should say yes, and probably less than that sometimes.

Q. Doesn't the casualty risk follow the passenger all the way through?

A. Yes sir.

Q. It would be pretty heavy from here to Los Angeles, wouldn't it?

A. Well, he does not get on and off the train very often.

Q. But the train is running all the time?

A. Yes sir the train is running all the time, and that risk goes with him.

Q. You have made a statement here of the cost diminish-
1411 ing on this trans-state business: I presume that is chargeable to freight and passenger both? The cost diminishes with the length of the haul: isn't that a fact?

A. Yes sir.

Q. Suppose you take a passenger from New York to the City of Mexico: is the cost diminishing all the way?

A. Oh, it diminishes within certain limits, of course.

Q. What are those limits?

A. Well, take that part of the journey say over the main line of the Iron Mountain road, if he rides from one end of the line to the other, all of the fixed or stationary expenses connected with his transportation and to which his transportation would be charged, diminish with the length of the journey. If he traveled from New York to the City of Mexico that proportionately diminishing of cost would obtain on every line over which he traveled.

Q. Certainly.

A. Therefore, take the entire journey in the aggregate, as compared with the short distance, the ratio of cost would be found to be very much less.

Q. If he would go to the North Pole it would not be anything, would it?

A. No sir. It would never exhaust itself completely but the unit would keep going down.

Q. It would become rather attenuated by the time he got
1412 to the North Pole, wouldn't it?

A. Yes, it would get very thin.

Q. That limit is not reached in Arkansas, I presume?

A. In the State, no sir.

Q. How far does it go? You say it was so within certain limits?

A. Oh, the word "limits" as used there means limits to the decrease. I do not mean limits to the miles.

For instance, I can illustrate what I mean there by applying it in another way; I stated in my direct testimony that where the density of traffic of a railroad increases within certain limits, the cost of transportation decreases.

What I meant by limits in that case was this: that cost would not continue to decrease after the potential capacity of the line had been reached, and it would be necessary to build a double track to carry the increased traffic. But up to that point the ratio of cost would decrease up to the potential.

That is what I mean when I say "limits" because if it continued to decrease, after awhile it would not cost anything.

Q. There has been no practical change on the Iron Mountain in the last few years, has there?

A. I do not know much about the details. Of course the
1413 fundamental conditions are the same there now as they always have been. As to the changes in methods of operation since I had charge of the line, I am not informed.

Q. On this question of rates, these fast trains cause more wrecks

than your local trains, don't they—I am speaking of your passenger traffic.

A. You are speaking of passenger trains?

Q. Yes.

A. Well that depends on conditions. If the condition of a road was normal and the track standard is high, I do not think the casualty risk upon a fast train is much greater than upon a slow train.

Q. It is some greater isn't it?

A. Yes it is some greater due to increased velocity. Of course when an accident does occur to that kind of a train it is probably more severe.

Q I was just going to ask you that question. That is a fact?

A. Yes sir, that is true.

Q Take it on your freight trains: there is more of a casualty risk on those trains running at night than those running in the day time, isn't there?

A. No sir I do not think there is much difference between day and night.

Q. Do you think you can operate a freight train as safely at night as you can in the daylight?

A. Well, I don't think there is much difference in that respect.

1414 I remember in the early days of railroading on some roads the trains were laid up at night on account of a supposed danger arising out of the darkness; but after awhile they discovered they could run at night about as safely as they could in the day time.

Q. The electric headlight helps them do that, doesn't it?

A. That is an uncertain question. Some men favor the electric headlight and some do not.

Q. Don't you think it makes operation safer?

A. In some respects I would say unqualifiedly yes; and then again there are objectionable features to it.

Q. In your testimony yesterday I think you said you would apportion the taxes against the State in proportion to the expense incurred in the operation in that State: is that correct?

A. Yes, sir.

Q. But you obtain that expense by going back to your revenue percentage, don't you?

A. Yes.

Q. So it really resolves itself at last into the revenue basis of apportioning your taxes, doesn't it?

A. It is founded on that, yes.

Q. It is really that, isn't it, where you take your revenue percentages to get at your expenses?

A. Yes.

1415 Q. You have spoken about the facilities for doing business on the different kinds of traffic: I want to call your attention to the facilities that are in Arkansas for the live stock traffic: those are facilities that are enjoyed almost entirely by the interstate traffic, aren't they

A. I am not exactly advised as to what intrastate live stock traffic there is in Arkansas. I am under the impression that it is not very large in volume.

Q. That would be one of the "negligible quantities" wouldn't it?

A. Yes. The facilities, however, where there are any state shipments, or any interstate shipments of stock, the stock pen is usually required at all of the local stations.

Now that stock pen, of course, costs something and it costs something to maintain; and it is used in shipments of both classes of live stock business.

Then to accommodate the trans-state live stock business there are some large yards.

Q. There is a large yard in Texarkana particularly?

A. At Texarkana and at Argenta there were large yards when I was operating the road. I am not sure whether we had one at Poplar Bluff or in that vicinity. But, any way, of course those facilities are used almost exclusively in the trans-state stock shipments.

Q. I notice here from a statement Mr. Hamilton furnishes me, that there are accommodations in Arkansas, on the main line of the Iron Mountain Railway for 287 cars of live stock.

1416 You would probably not know those figures, but I suppose from your familiarity you would know that is reasonably accurate.

A. Yes sir I know we had a large yard at Texarkana and at Argenta .

1417 Q. I want to call your attention to cotton platforms: You have those at all your stations in Arkansas, have you not?

A. Generally speaking, I should answer yes.

Q. That is a facility for interstate business, is it not?

A. Well, I am of the opinion that that is for both state and interstate.

Q. Is it not a fact that the cotton is all—or probably all but a negligible quantity—all interstate?

A. So I understand.

Q. I believe it has been shown that probably a good deal less than one per cent is moved intrastate: that would be about your idea?

A. It is a very small amount, as I understand the method of moving the cotton.

Q. Practically speaking, that is a facility for interstate traffic, is it not?

A. Yes sir, as far as the percentage of traffic handled over those cotton platforms goes.

Q. There are two facilities that are used practically exclusively for interstate traffic, that you have been referring to?

A. The large stock yards and cotton platforms, yes.

Q. Well, there are small stockyards, too, I suppose, all around?

A. There must be some movement of intrastate stock in Arkansas.

Q. There is no considerable movement, though; I suppose you know that to be a fact; no packing houses?

1418 A. No, it would not be great in volume.

Q. Here is a statement from an affidavit made by Mr. McPherson, which was filed before Judge Van De Vanter at St. Paul. I did not have it when Mr. McPherson was on the stand. I will submit it to you and see if you agree with this statement:

"The cost of the movement of the train is the same whether the cars are loaded to their full capacity or carried empty. The crews consist of the same number of men without regard to whether the train is made up of full load, light load, or in part in empty cars."

A. That is correct in the aggregate, as to the cost of the labor of running the train, and that is probably what Mr. McPherson had in mind.

Q. That is all I was inquiring about.

A. There would be no difference in the wages, as to whether the train was loaded, or as to whether the car was loaded.

Q. Would there be none in the fuel?

A. Well, there would be less fuel if it was a light train; if it was under the potential power of the locomotive.

Q. I believe you stated in your Missouri case that it was infinitesimal?

A. Because it is not customary to run light trains except in certain conditions of emergency.

1419 Q. Broadly speaking, this is a correct statement, is it not?

A. I think so.

Q. You said something about that trans-state freight was transported across the state, as if it were upon a bridge: I believe that was your expression in illustrating the movement of trans-state shipment, was it not?

A. Yes.

Q. When it comes to a division point it alights from the bridge, doesn't it?

A. Well, it is on one of the piers.

Q. It has a good many piers, has it not?

A. Not very many.

Q. They have one in less than every hundred miles?

A. No, their divisions, as a rule, are longer than a hundred miles.

Q. How much longer on the Iron Mountain—the main line, I am talking about now?

A. I cannot tell you what the distances are. You know what they are, I think.

Q. Yes.

A. From Poplar Bluff to Hoxie, now, (it used to be Little Rock); I think that distance is in the neighborhood of 140 miles—no, it is more than that.

Then to Texarkana——

Q. Don't you stop at Newport? You have another pier at Newport?

1420 A. No, it is a junction point.

Q. No, it is a division point.

A. I don't know how they are operating that road now; I referred to the time when I was operating it.

Q. Ask Mr. Johnson there, he can tell you. Is Newport not a division point?

Mr. JOHNSON: That is not my understanding; not for through trains.

Mr. HILL:

Q. Your crews stop there, don't they?

The WITNESS:

A. On the through trains I don't understand that they do.

Q. At any rate, there are various piers through the state?

A. The average run of the through train, or an engine run, is over a hundred miles wherever it can be made so, for economical reasons in the payment of the men and in the efficient use of the locomotives; sometimes it is as high as 150 or 175 miles.

Q. Your bridge would not stand up without these local piers?

A. It is necessary in the operation of trains, to change locomotives and crews.

Q. Every time you change them you change the complexion of your train, don't you; not every time, but frequently?

A. You change the complexion of the train where you strike a change in the topographical conditions of the road. For instance,

1421 where there is a break in the grade line, or where you change the volume of business carried by the train. Now, ten years ago, the Iron Mountain would change the volume of the train at Little Rock, southbound, and northbound, as well. We also changed again at Piedmont, when we struck the rough grade line.

Q. Whenever the potential of the engine is changed, you change the complexion of the train?

A. Increase or dimish the tonnage of the train.

The road, south of Little Rock, has been improved, and the conditions are not so——

Q. Coming back to your illustration: this bridge that you carry it over is supported by state operation—local operation, is it not?

A. As far as the state business goes, yes, but the relative density of the two classes of traffic would indicate that the interstate traffic is the support.

Q. I thought you said that the piers were the support?

A. That is a figurative expression, you know, the piers.

Q. Well, you don't go over the state in a flying machine with any of your freight?

A. No sir.

Q. You have to have a physical connection with the state to get along at all?

A. The use of the word or term "bridge" is, of course, relative.

Q. When you get to Little Rock with that train on the

1422 bridge, you would strike some other through cars you would want to take to Texas or New Orleans, as the case might be, would you not?

A. Well, I rather think some of that train would be set off, rather than added to.

Q. It would probably be both, would it not?

A. It might be.

Q. You would not be on a flying machine when you got to Little Rock, you would have to make up another train?

A. No, not make up another train; not a through train for Texas.

Q. Are you not speaking of an ideal condition, more than you are of a practical situation, when you liken that trans-state shipment to a bridge?

A. No, I am not; I am speaking of a condition that prevails on most trunk line railroads. The trains at large massing points are made up with a view to their economical transportation over the line, and when they come to cross a state, the necessary yard work incident at division points, changing engines, adding to or diminishing the trains, occurs in different forms and in different amounts on different roads.

Q. Your local business creates the interstate business, does it not?

A. The local business, of course, is the foundation of the interstate business throughout the country generally.

Q. Is it not a fact that this business is so interwoven—
1423 interstate and state, with the local—take any division you please—that it is impossible to make any division of it on a theoretical line?

A. It is true.

Q. I want to give you an illustration about these local trains and your through trains:

Take the division that I know best about, Little Rock and Fort Smith; I believe it is in the testimony here that about twenty-five trains a day are run there: your local would meet only one of its own class during that day's run, wouldn't it? Probably there may be two locals on that, I would not be certain about it.

A. I should say there would be two locals between Fort Smith and Little Rock; I would not think they could make that run without two.

Q. I think that is right; take two locals, then.

A. Yes.

Q. Each of those two locals would meet two of its own class that day? Each would meet one train of its own class, and the two together would meet two locals?

A. Yes.

Q. It would meet twenty-one other trains, wouldn't it?

A. No, I don't think it would, if it is twenty-five trains a day; part of them would be running at night.

Q. They would either meet them, or be overtaken by them?

A. Either meet, be overtaken or passed, during the night.

1424 Q. They would have to get out of the way—the local, I mean?

Mr. MOORE:

Q. You mean the local would not run at night and the other would——

A. Yes.

Mr. HILL:

Q. Such of the 25 as would run in the day-time (which would be all except the one or two locals), would have to get out of the way of the other trains, the 21?

A. That is the general practice, that the local sidetrack for trains that it meets and passes. The local, however, has the rights of a freight train, and the direction in which it is running would indicate its right of track, whether east or west.

Q. It vacates the track for everything else?

A. As a general proposition it is customary for a local train to vacate the main line.

Q. That adds materially to the expense of the local?

A. In some places it might add to it, where it had to wait on a sidetrack, and if they do nothing with it—if it has nothing to do; but the local train practice is, when it reaches a station to proceed to do its work and it may clear the main line or not and be busy, maybe, at some point an hour, doing its work.

Q. Well, if it is out on the road it has to take a passing track, that is just adding to its expense——

A. It would add to its expense, if there was nothing else
1425 for it to do but wait.

Q. This item of expense has been brought into this case, of local trains lying on passing tracks, the use of the passing tracks: what I am getting at is this: that is an expense that should be attributed to the train that caused the local train to go on a side track, is it not?

A. If you were going to charge it up to anything (it is not charged, as a matter of fact), but if it were, it ought to be charged to the class of business that caused it.

Q. I think you testified yesterday about these fast freight trains: if you were going to charge it to any class, you would charge the class that causes it.

A. Yes.

Q. I believe you stated in the Missouri case, that if the intrastate rates were put on a compensatory basis, that they would be prohibitive?

A. I gave that as my opinion, Judge.

Q. That is true, is it not?

A. Yes sir, I believe so.

Q. With both the Arkansas and Missouri, is it not?

A. Yes, I think that would be the case in Arkansas.

Q. Then the practical result of putting state rates on a compensatory basis, to the railroad, is to injure, if not paralyze the industries of the state?

A. And the railroad as well.

Q. Yes, that is true; not so much so to railroad as it
1426 has got its traffic that goes over the state on a bridge; of course that would not be affected?

A. Yes, that would be affected if the same principle were applied in all states through which the railroad runs; ultimately you would——

Q. We are talking about conditions in Arkansas now, and the Iron Mountain: the result of that would be to throttle the Arkansas business, and allow the Iron Mountain to enjoy its traffic that it carries over the state on the bridge: is not that a fact?

A. It seems to me that that would not be—that is hardly a fair way to put it. My judgment is this: if the intrastate business (considered in its small volume and with all its relations), were put on a basis compensatory in itself, without reference to any other business, that it would be necessary to place the rates so high as to deprive the industries of the state of the benefit of competition, and thereby they would be throttled.

The facts are, that when the railroads were free to adopt any sort of rates they pleased, they so adjusted them as to prosper the industries, and at the same time prosper their own interests, and without reference to the physical cost in individual cases.

Q. Did you not testify in the Missouri case, that the rates in Arkansas, even before the Commission reduced the rates, had not been on a compensatory basis?

1427 A. In Arkansas?

Q. Yes.

A. I don't remember. I don't remember that I made any statement in the Missouri testimony about Arkansas.

Q. My recollection, Mr. Doddridge, is that that question was asked you generally, and you said you could not answer as to Missouri, but you could answer as to Arkansas, because you had been so intimately connected with the business in that state.

A. I will say, that regardless of the section of the country that I was testifying to at that time, I never have thought that the rates themselves were high enough to be profitable, taking everything into consideration, and eliminating several other conditions.

Q. That applied to the situation when the railroads were making the rates themselves, did it not?

A. Yes.

Q. Well, I will not bother looking up this question, as to what you said about Arkansas, because I think you have substantially stated the same proposition.

A. Yes.

Q. The practical result of that opinion would be this:

As state rates cannot be put on a compensatory basis, without destroying the industries of the state, then there can be no state regulation of them at all, can there?

A. I think there can be state regulation in some respects, but I think that it would be quite limited, putting it on that basis;
1428 that is to say, a strictly compensatory basis—that is, where that will yield a profit in itself.

Q. That is what I am speaking of.

A. It is a big question if you would discuss it to its conclusion. I will give one illustration of what I mean, as bearing upon it, to make it more clear:

In my experience, there are very few branch lines of railroads that have paid any profit whatever, unless there was some special feature connected with the business, such as a large coal tonnage or iron ore tonnage, or something of that kind, to make it profitable. On that kind of a line there is but very little traffic excepting the intrastate traffic, or local interstate traffic. That being the case, where the railroad companies derive a profit from that class of business, is after that traffic reaches the main line, and where there is a long haul; where there is a large traffic density and the cost of transportation, relatively, very low; that is where a profit is derived from the business, but it is not directly attributable to the line that produces it. So, if you have the same condition prevailing throughout a state, the business would not be profitable in itself.

Q. I believe this branch line proposition that we are discussing, so fas as the Iron Mountain in Arkansas is concerned, resolves itself, in Mr. McPherson's testimony, to eight per cent of mileage that cannot be used for trans-state business. You heard Mr. McPherson's testimony to that effect, did you not?

1429 A. Well, I was not viewing it in that way. I was trying to illustrate what I meant by state traffic taken by itself; that if you made a rate high enough to pay a profit without taking any other thing in consideration.

Q. That comes back to the fact that where the state cannot put rates of low compensation, that it is impossible to have any state regulation, under your view, of the cost of intrastate traffic?

A. I think the railroads themselves, for commercial reasons, would adopt tariffs that would be lower than the law would permit the state to make them.

Q. Is not that rather begging the question? I am not reflecting——

A. It means the same thing.

Q. The state cannot do it, but you think the railroads would be kindhearted and do it?

A. No, I don't think they would do it from any benevolent feeling, but from a selfish motive, to prosper their railroads and the section of the country through which their roads operate.

Q. You know that the railroads, after they got an injunction from Judge Van De Vanter, did increase the rates, don't you?

A. I so heard, yes sir.

Q. You heard that the lowest estimate that was made of that increase was forty-two per cent, didn't you?

A. Well, several stated it to be thirty-three, and some forty-two.

1430 Q. No, nobody stated it was as low as thirty-three when the railroads put in their rates. Later that proposition came up in the court tariff. Mr. Johnson will tell you that——

Mr. JOHNSON: As far as the Iron Mountain was concerned on two months' business——

Mr. HILL: Taking that as assumed—that the lowest increase on the rates was forty-two per cent, do you think the state would stand such an increase as that?

A. I don't believe I am qualified to answer that question, because it requires a man with a vast amount of detailed information to know what the effects of certain rates will be on the traffic; in fact, it requires the constant attention of able men, with a vast amount of detailed information at hand, to pass intelligently on questions of that sort.

Q. When traffic men go to fix rates, do they have the benefit of any accounting system that would show the cost of the traffic that they are about to fix rates on?

A. Of course the statistics—the detailed information is at hand if they call for it, or if they want it.

Q. Is there any detailed statistics to show the cost of any given traffic?

A. Not unless it is specially prepared.

Q. The Iron Mountain road has a Commissioner of Statistics, has it not?

A. I have heard him referred to in the evidence here. I
1431 am not familiar with his duties at all.

Q. Do you know whether he prepares any statistics on the cost of the movement of traffic?

A. I am not familiar with his duties.

Q. You don't know what he does?

A. I have no idea whatever.

Q. Did you have a Commissioner of Statistics when you were General Manager of the road?

A. No sir, I got my information either from the accounting department, or made it up myself on the road, by my own system.

Q. As a matter of fact, Mr. Doddridge, there is no system of accounting, on the Iron Mountain, or any road that you are familiar with, that shows the cost of the traffic?

A. Except in a general way, taking all the traffic into consideration, there is no systematic method——

Q. What is the unit they use in those statistics, in a general way?

A. What statistics do you refer to now?

Q. The same that you are referring to, that in a general way they might have an idea of the cost of the traffic?

A. The customary method of making up statistics is upon the basis of ton miles.

Q. You stated here somewhere, either in your testimony here or in the Missouri case—I don't remember which, that mail is
1432 paid for, relatively, higher than the express; that the Government was liberal in its payments, or something of that sort—or to that effect: that is true, is it not?

A. I stated that the revenues from the mail and express were comparatively high, as compared with the cost of the physical

service rendered, and that a division upon the basis of gross earnings of the expense, was favorable to the state, in my judgment.

Q. How so?

A. Because if the "Miscellaneous" earnings did not exist, and a railroad did not carry any mail or express, there would not be a corresponding reduction in the expenses, for the reason that this class of business, carried upon passenger trains—the probabilities are that the same number of passenger trains would be operated, and the difference would be largely in the number of cars carried; for instance, a passenger train might run one or two less cars if it did not have that class of business to handle, but the number of trains would remain the same.

Therefore, the expense that is set aside upon the gross earnings basis and attributed to that feature of the service is favorable to the other expenses charged to the state.

Q. If it shows favor either way, then it is far from being an exact and fair method?

A. It is one of those things where there is a certain element of "give and take" about it. I don't know of any way to ascertain the exact physical cost, definitely, of performing this service.

1433 Therefore, we simply attribute that much to the amount represented by its gross earnings.

Q. Is it not a fact that the best locomotive power is put on the through trains?

A. Yes, sir, I should think so; it generally is.

Q. Which runs the faster, the through freight or the local freight?

A. There are two ways of answering that question: the road speed of a local train is generally about as fast as they can wheel them, as between stations. The schedule time of the local train is slower, for the reason——

Q. I am speaking of the movement, not the schedule——

A. I should say the local is about the speediest.

Q. It runs faster; while its loss of time at stations would make it a slower train in the aggregate, yet its actual movement is faster?

A. Its actual movement is very rapid.

Q. We have had some discussion about "outside agencies"; these fellows that blow up your road, puff it up and brag about it, and get trade and custom, things of that kind—I don't know your technical terms, but you know the gentlemen I am referring to: do you think that item of expense is properly chargeable, in any large degree, at least, to intrastate traffic?

A. I think the intrastate traffic should bear its relative proportion, for a great many reasons. Among other reasons is this; that these men are agents, generally, in their character; they act

1434 in the nature of advisers, as well as solicitors, and it is the policy of the railroads (in Arkansas as well as in other states where there is undeveloped country), to advertise the country and do what they can to develop it, and they use these men for distributing information; for distributing advertising matter generally, and for inducing settlers to come into a country.

Q. I am not questioning the propriety of the railroad companies

in having these excellent gentlemen, but I am getting at that producing quantity, I believe, to use your term; do they produce, relatively, the same revenue for intrastate business, that they do for interstate?

A. Well, that is one of those indeterminable questions that cannot be solved; some of them I should say do a good deal more, and others not so much.

Q. That is one of your "give and take" propositions, where the giving is to the interstate, and the taking is from the state, is it not?

A. I would not want to qualify as saying that, exactly.

Q. That is substantially correct, leaving aside the jocular feature of it, is it not?

A. No; these agents look upon the railroad as a unit. Of course they are not instructed to discriminate as between states or state lines; they don't think about that.

Q. That is undoubtedly true, but I am talking about the effect of their efforts, Mr. Doddridge. Take the intrastate traffic of Arkansas: how much could that be affected by all these gentlemen going
1435 around with pretty cards; how much is the intrastate traffic of Arkansas affected by that?

A. I think it has a proportional effect.

Q. You think in proportion of the revenue derived from the interstate, with the——

A. I think so. If you will look up the figures of that portion of the business, and take into consideration——

Q. Did you not testify in the Missouri case, that their services did not redound in so great a degree to the intrastate, as it did to the interstate business?

A. I was considering it in the aggregate, but when you come to take into consideration the small percentage——

Q. That is getting back to the point that it is a little thing and don't hurt. I am not measuring its effect; I am trying to get at the true basis.

A. I cannot say what the difference would be.

Q. I want to read you this from page 275, in the Missouri case: "Those offices are maintained primarily for the solicitation of freight and passenger traffic for the entire system. Incidentally those officials advertise the country through which the railroads run. And in doing so they advertise the State of Missouri, as well as Kansas, and certainly a part of the expense would be attributable, I should say, to the state business of Missouri. Perhaps not in so great a degree as when you come to make a division between state and interstate traffic."

Is that correct?

1436 A. Well, yes.

Q. Now, Mr. Doddridge, you cannot insist that a revenue division of that item of expense (be it great or be it small), would really be fair, could you?

A. I don't know of any other way to——

Q. I know that you so testified. I am not asking you if you know another way. I am asking you if it is a fair way?

A. I would not say that it is not fair.

Q. You certainly would not say it is fair, would you?

A. I would not want to qualify as definitely expressing an opinion on that particular point. As a general proposition, I should say it is fair.

Q. Mr. Doddridge have you ever made an estimate on the terminal cost of passengers?

A. I never made a complete estimate, no sir. I made figures on part of the expenses. I think I did that in Missouri, and I think I figured on it somewhat in Arkansas.

Q. I want to know how you get at it, and what figure you put for the terminal cost of passengers.

A. I never had the date necessary to make up a thorough and complete statement of these expenses. I have never been able to obtain it; of course, you can; it is a very easy matter, from the railroad company's record, to ascertain the single element—we will say, of labor at stations; they have that on their pay rolls.

Q. Did you not in Missouri, take up one of the railroads—
1437 the Burlington or Wabash—all their passenger statistics, and work out a terminal cost of between four and five cents for each passenger?

A. As far as I went (I don't remember now what road, I think it was probably the Missouri Pacific), I figured out that of those elements that I could get hold of, it amounted to about four or five cents. It was impossible for me to get all of the information necessary to make an intelligent statement. For instance, I could not get the maintenance of structures, and things of that sort, that enter into that calculation.

Q. I want to call your attention to—I want to read——

Mr. MOORE: He just stated that he made a statement to that effect. Is it your purpose in reading that, to contradict him?

Mr. HILL: No, I want to call his attention to the statement made, and ask him if it is correct.

Mr. MOORE: I want to object to that, because that is interjecting into this case testimony that was introduced in another case, and I don't think it is competent—it is competent to contradict him, or to show that he made a statement elsewhere; unless you are using it for the purpose of contradicting——

Mr. HILL: I am asking the basis.

Mr. MOORE: I don't think that is proper——

Mr. HILL: I think it will refresh his memory.

Mr. MOORE: It is not competent, because the effect of that is to make that testimony in this case, and I don't think it is
1438 competent.

MASTER: We will follow the rule before adopted, a very liberal one. I will let anything go in that has a bearing on this case.

Mr. MOORE: That has a bearing on this case, but it is not competent to prove anything in this case. Judge Hill can ask him the same question he was asked then.

MASTER: It may explain or elucidate some of the testimony already given in the case.

Mr. HILL: That is it. Now, reading from this testimony:

"Q. How do you figure out it costs from four to five cents terminal expense, per passenger, per trip?

A. I take the total number of passengers that get on and off the train at the station, simply count them, no matter whether they are state or interstate, and divide the expense by the number.

Q. Have you done that?

A. It is in some of the railroad reports."

Is that a correct method of getting at it?

A. No, I dont think it is. Since I made that statement I, of course, have gone into the subject further, and I don't think that covers all of the elements—that is what I am getting at.

Q. What method have you got, that got at that terminal expense, if you cannot take this method?

A. I find among my memorandums a method that we
1439 designed for that purpose, or formula. I did not give it in my reasons, because the information necessary, upon which to predicate it, is absent, but I will read the example; it is self-explanatory:

Take the St. Louis Southwestern Railroad, for the year ending June 30, 1908; they carried 928,313 state passengers; double this number to compensate for two station handlings. The number then indicates ninety-two per cent of the total passengers handled.

The interstate passengers handled were 145,351; allowing one handling for each passenger, this constituted eight per cent of the terminal cost.

The intrastate passengers produced fifty-five per cent of the passenger miles and should be charged with ninety-two per cent of the terminal expense.

Now, if you know the terminal expense in dollars and cents, it is a very easy matter to arrive at the extra cost, on that account, per passenger—either class of passengers.

Q. You think that is a good, fair basis of ascertaining the extra terminal cost for passenger service?

A. It would be somewhat more than fair to the state, for the reason that there is a certain percentage of these 145,351 passengers that do not make any terminal expense at all in the state.

Q. It is the best method on the subject that you know of, isn't it, better than this Missouri method, or any other?

A. I think so; this is the result of reflection and con-
1440 sideration, and this shows it figured out to a conclusion, using hypothetical figures, that the state terminal cost upon this road, and, based upon these statistics, amounts to ten to one.

Q. Were those hypothetical figures? I thought you said they were actual figures.

A. No, these are actual figures, that I read, but I say, you would have to use some hypothetical figures to get at the amount, in dollars and cents——

Q. The only hypothesis you have made in that, is assuming two passengers for one, in order to get at your terminal——

A. Yes.

Mr. MOORE:

Q. Is that a hypothesis, or actual fact?

A. There might some case come in like we had in the freight business here at Fort Smith——

Mr. HILL:

Q. That same thing would apply?

A. That brings in an interstate condition.

Q. While we are on that, just a moment—on that interstate passenger feature of the physical situation in Arkansas: all passengers out of Memphis would be interstate passengers, with two terminals in Arkansas?

A. Yes, sir, the same as the freight.

Q. At Fort Smith, I believe the only difference would be that two of your passenger trains run across a bridge and keep in the state, and two run by a junction——

A. Yes, that——

1441 Now, on the Kansas City Southern——

Mr. MOORE: That would not be true with trans-state passengers that went across the state.

Mr. HILL: They would have one terminal, that would be the difference.

A. They might not have any in the state.

Q. If they came through Memphis they would; you have charged your terminals——

A. In that case, yes.

Q. Everybody, from Memphis, to California, would have one terminal expense in Arkansas?

A. Yes, sir.

Q. Just one other question right in that connection, on this Cotton Belt: I understand you got that from the Cotton Belt test?

A. These are the Cotton Belt statistics, the actual number of passengers.

Q. That reminds me of a statement I wanted to ask you about, on the Cotton Belt test: You stated in detail yesterday, the test that you had made of the expenses of the Cotton Belt for a given month, and took the percentages there from the exhibit that is on file, showing five to one, I believe, from five and one-half times to one; that was on the freight traffic.

I call your attention to that exhibit—I don't know the number of it there; I expect you know——

1442 Mr. MOORE: Exhibit number 19.

Mr. HILL: And also called your attention to Mr. Kimbells' testimony about it.

After taking the actual figures, he then used the average revenue, per ton, per mile, to make his calculations: is not that a fact?

A. I don't know how he made his calculations. He used, however, the revenue basis from each class of freight, upon which to make his calculations, as to the difference in the ratio of cost.

Q. What I am getting at is, that he used the revenue per ton, per mile, even after he got the actual facts to make those calculations: did he not?

A. I don't know; Mr. Kimbell is here, he can answer that question.

Mr. MOORE: You need not mind about that; if you don't know, say so.

A. I don't know.

Q. I want to call your attention to Mr. Kimbell's testimony on that.

1443 Cross-examination of Mr. Doddridge, continued.

By Mr. HILL:

Q. Mr. Doddridge since our recess have you informed yourself as to the question I asked you as to the method in which the Cotton Belt exhibit No. 19 was made up?

A. What was the question?

(LAST question of the morning session read as follows:)

Q. "What I am getting at is this: he used the revenue per ton per mile even after he got the actual facts to make those calculations, did he not."

A. Yes sir.

Q. That "yes" would apply to both of them?

A. To both questions.

Q. You had better make that more full.

A. I will explain this way: I have made inquiry and Mr. Kimbell ascertained the revenue upon the two classes of the trains by multiplying the number of ton miles carried upon each train by the average revenue derived from each class of the traffic per ton per mile, and then apportioned the expenses upon the percents which the two sums bore to the total.

Q. That is the percents of the revenue?

1444 A. Yes. In other words, the calculation is upon what we would call the "straight revenue basis."

Q. The result of that is that instead of using the actual results ascertained in the test, you take the revenue earned by each class of trains as your divisor and reach results dependent upon the revenue theory?

A. Yes sir.

Q. You testified before we adjourned as to the terminal cost on passenger traffic and the method of ascertaining the same. You stated that since you had given the Missouri testimony that you had studied the question further and had reached a conclusion that the method that you have outlined here was the best method of ascertaining that: I believe that is correct?

A. Yes sir.

Q. I will ask you if you have given further study and thought to the terminal expense in the freight traffic as well as the passenger traffic.

A. Yes sir. I have come to the conclusion that the proper method of ascertaining the correct terminal expense as to the freight would be substantially the same as that of the passenger.

Q. That is your judgment as to the best and fairest way of apportioning the terminal expense in freight traffics; that is, it would be substituting merely a ton for a passenger in making your estimates?

A. No it does not substitute a ton for a passenger. The
1445 difference between the freight proposition and the passenger proposition is that the passenger has no weight or bulk. The passenger mile is used as a unit in making the calculation.

Q. What unit do you use when making a division of freight?

A. In ascertaining the percentage of freight terminals we would take into consideration the lengths of the hauls.

Q. Is not that the multiple and not the unit? I am trying to get at your unit on the freight terminal expense. You have taken the passenger in the passenger traffic, now what is your unit in the freight traffic?

A. Well, we would divide the percentages on the same basis of calculation that we do passenger.

Q. Would not that be taking the ton as the unit?

A. The ton would be taken as a unit in the freight.

Q. That is what I am asking.

A. Yes.

Q. The only difference in your apportionment of terminal expense between freight and passenger is you take a passenger as the unit in the one traffic and a ton as a unit in the other traffic?

A. Yes sir.

Q. Mr. Doddridge I want to call your attention to this statement in your Missouri evidence and ask you if think this is true as applied to the situation in Arkansas:

1446 "We can demonstrate with mathematical accuracy the extra cost of train service and station service of the state freight over and above the through freight, by the through freight handled. The transportation expense of the railroad is about 50% of all. Now practically all the expenses in addition to the transportation expenses (transportation expense includes station service, yard service, switching and all these things) it is not practical or possible to divide these other expenses mathematically, with mathematical accuracy, because they are common. Now, while they are given, who is going to say which proportion is to be attributed to this or to the other."

Is that a correct summary of the situation?

A. It was a correct summary of the situation as far as my knowledge went at that time. Since then, of course, we have made some calculations and some investigations. For instance, with respect to the proportion of terminal expense where we have found a method I think of determining more accurately some additional expenses than stated in that answer.

Q. What are they?

A. Take the terminal service for instance; in that we have found a method I think of determining that with fair accuracy.

Q. That is the method that you have just described?

A. Yes, just described; that is one, and then we found, for
1447 instance, I think the maintenance of equipment expense can be determined closer than I indicated in that answer.

Q. Let us take up and consider that "maintenance of equipment"; I wish you would explain how you could get at that.

A. I do not pretend to say that I can get at it with mathematical accuracy, but I think that the number of locomotives required to produce an equivalent number of ton miles in the local freight service, can be ascertained accurately, as compared with the number of ton miles that an engine will produce in the through service.

Q. Then after getting these estimates on the local and through service you would apply your percentages of the traffic carried on each?

A. Yes, and from that you can deduct approximately, pretty closely, the amount or the quantity of engine service required to produce the two things.

Q. You mean deduce?

A. Yes, deduce. Now, that is one item. In the matter of car service the same information is "get-atable" as applied to the number of ton miles produced, of each class of business. Then, as to the amount that should be charged to maintenance of equipment on account of cars, of course, there is an element of uncertainty, but based upon the number of times the car is handled and the time that it is occupied in producing these ton miles, from those factors you can form a pretty fair estimate of the amount that should
1448 be charged against the equipment for its maintenance; but I will say, not with definite precision, because there are still some elements of uncertainty connected with it.

Q. But you mean that the methods you suggest would come nearer being an absolute method than any other possible method?

A. Than the former opinions expressed on this subject.

Q. That is the best thought that you have on that subject now?

A. Yes.

Q. Now taking up that subject "maintenance of cars": would you say that the hauling and loading of a car in a local freight train caused more wear and tear in hauling that car than a similar car containing the same commodity and the same through tonnage in a through freight train, the same distance, on the same piece of track?

A. No, so far as the train service is concerned I do not consider there would be very much difference, if any; but in the terminal service, cars are handled many more times at stations in switching. The question as to the amount of damage a car receives in handling or whether it receives its wear and tear from road use, is an uncertain quantity. The best judgment that I have on the subject, and the best that I have been able to obtain, has been that a car received 50% of its damage in handling in switching.

1449 Q. Where does it receive the other 50%?

A. It receives the other 50% in other ways, in road service, or in other ways. I am merely giving that as an approximation; the probabilities are that that is about right.

I had occasion to investigate that question with an idea of forming my own judgment, and the opinions of men who are qualified to give an opinion on that subject range all the way from 25 to 75 percent on that point, so that I would say, conservatively, that I do not believe 50% would be out of the way. The greatest damage the equipment receives, of course, is in the larger terminals, like St. Louis and Chicago.

Q. There is the longer haul on the through train element to be considered in that, is there not; an element to be considered in wear and tear if cars?

A. Yes, sir; the car of course receives more road wear the further it goes, than it does in the shorter haul; but when a car is loaded and under way, the percentage of wear is mainly to the running gear and is not very severe, so far as straight mileage is concerned.

Q. There is an element of wear in the terminal handling of local joined with the short haul as between that, is there not?

A. Of course in the short haul the car is handled many more times proportionately than it is in the long haul.

1450 Q. Everything considered, would a car mile basis be fair between these two classes of trains? I am speaking about this maintenance of equipment.

A. Well, a car mile basis, it seems to me would be very similar to the ton mile basis.

Q. I do not suppose there would be any practical difference.

A. It would be an average and it would not take into account the extra handling. It would simply measure the miles; the mile would be the unit the same as the ton mile.

Q. If you take the car miles as a basis would you add anything, and if so, how much for the local?

A. Yes, I would have to add this element of handling.

Q. I want to know how much you would add to that.

A. I believe that it is demonstrated in these statistics to be about 10 to 1.

Q. There would be 10 to 1 handling on that?

A. I think so. Take the average haul, the difference between the miles.

Q. We are taking the difference now, as I understand it, between local and through.

A. Take the difference in the miles in state and interstate freight, those are the only statistics we have.

Q. You are getting away from the question, unintentionally of course. As I understood it we are now discussing the question between local and through and you derive your intrastate and

1451 interstate by dividing the proportion on those. But the primary division must be the division between a local and a through train.

Mr. HILL (to the witness): I am asking you to devote your attention as between the local and through.

Mr. MOORE: You are speaking of the train or what the train hauls?

Mr. HILL: The train.

A. Judge, I do not know how to figure that out from the way you put the question. To ascertain the relative difference you would have to take the lengths of the hauls, that is the state and interstate haul.

Q. You are getting back to the state and interstate: I am asking you about local train and through train. We will get at the state and interstate from those.

A. I haven't any statistics that show differences in the length of the hauls as between the local business and the through business. We have statistics as between the lengths of the hauls for the two classes of trains, the length of the runs.

Q. That is what we are getting at, as I understand your question.

A. The Cotton Belt time table shows that the average length of their local haul is 60 miles, local train. The run of a through train in 24 hours, is between 250 and 300 miles.

Q. That is ignoring your division terminals entirely, is it not?

1452 A. Yes sir using the element of time.

Q. But now we are trying to get right down to the actual facts in the physical handling of that run; the difference in the haul of a through train and a local train. You have testified already about the trains breaking up in the divisions. Now I want to get at the difference in the haul and what apportionment, if any, you put against the local train on this particular item.

A. I haven't any statistics on that——

Q. You have some judgment about it as a practical operating man.

A. I do not want to make any wild statements on that point unless I have the number of the relative handlings that the cars receive; then my judgment would be predicated on that.

Q. The starting of a heavy train with the slack bunched, the stopping and reducing speed, with the train spread, is undoubtedly responsible for much damage to draft gear and other equipment is it not?

A. Yes sir.

Q. Is that an element that you have considered in this?

A. Yes sir.

Q. Is it not an element which off-sets at least in a degree, if not entirely, the yard damage?

A. In a degree, yes sir.

Q. Will you state approximately in what degree it would.

1453 A. No, you could not state that. It is one of those indeterminable things depending on conditions, depending on grades, water, the character of the road. For instance, take a train on a road running along, if it is a poorly built road with imperfections in the grade, line full of sags, and that sort of thing, that would produce this same character of equipment in a big train that the

starting from a station will produce, and frequently trains will part, break in two and three pieces, from that cause.

Considering the St. Louis Southwestern Railroad main line in Arkansas and the Iron Mountain line, those defects have been largely removed in the last ten years and the physical standard in that respect brought up so that does not obtain very much. Of course the starting of these heavy trains create some damage, but in my evidence I put the station handling at 50%.

Q. I am trying to get down to the actual facts, Mr. Doddridge, instead of theories. You have given us a definite percentage on that and I would like to know something definite about the other side, a counter-proposition there as against other trains. I would like you to give us your best judgment as a practical man.

A. I would say that the other 50% is done in these other ways.

Q. The through train also gets its yard handling in terminals and division points?

1454 A. There is no difference in that respect as to what kind of a train it is. Under the same circumstances and conditions it gets all this physical handling.

Q. If that is the case I do not understand why you object to the car mile division then.

A. Because in the case of the other freight, short haul freight, it gets more handling; the cars receive more handling, pro-rata.

Q. Is it not a fact that the average through division is very closely approximated in length, to the average haul of the state freight?

A. No, I think not. I should say it ought to average about three times the length of the haul on the Cotton Belt, and it averages a little less than twice, I should say, on the Iron Mountain.

Q. If those runs were approximately the same, without going into the detail about that, there would be no objection to dividing that on a car mile basis, would there?

A. In a train passing through a terminal the cars do not receive the handling that they receive at a station, or at a point where the car is switched out of the train and set on an industry track. It is a different kind of handling altogether. The through train at a division point frequently does not leave the main track and it does not receive any switching at all, perhaps, except to cut the engine off and change a caboose.

1455 Q. That is in cases unquestionably true, but as a practical proposition that is not the way the freight is handled is it?

A. I think it is unless there is some condition of congestion or something of that kind that changes the thing, or the train is increased or diminished. In that case the train is not reclassified on the road if it is a through train. What I mean by reclassified is, a train here and there—it is usually set out, a certain number of loads set off and thrown out, constitutes one switching, and then the train goes on; or, there are a certain number of loads added to the train. A through train does not receive the switching at the terminal point that a local does.

Q. Without going into all that detail—I am trying to get at

something definite as against a theoretical proposition. I asked about the car mile. Have you any other basis to suggest for it; you say you can locate these things with precision.

A. I did not say I could locate them with precision. I said we had figured out a method by which we thought we could get it more accurately than we could a year ago.

Q. What is your method on this proposition?

A. To get at the amount of damage that equipment would be charged with I should take into consideration the number of times the equipment is, proportionately, handled to produce a given number of ton miles, and then upon that proposition I should form my conclusion and estimate as to the amount that should be charged against that equipment for that purpose; that is, terminal handling.

Q. Suppose they were an approximately equal length of
1456 haul, that is, the average local haul with the division point?

A. We have an average length of haul, one was an interstate shipment and one was a state shipment——

Q. I am talking about the local and through.

A. If the haul and conditions were the same the charge would be the same against the equipment.

Q. Then you would come back to the car mile division if the car haul was the same?

A. If all the circumstances and conditions were the same I should say it would answer the purpose very well, as an average unit. If you want to divide it for some other purpose, that purpose would not meet the requirement.

Q. But it would be all right for maintenance of equipment under those conditions?

A. Considering the road as a unit, yes sir.

Q. Let us take up some of these other expenses according to this division of expenses made by the Interstate Commerce Commission: the transportation expense—the question of labor is one of the chief items in that I presume?

A. Transportation?

Q. Yes sir.

A. Yes it is one of the large items.

Q. I believe you have heretofore stated that the overtime
1457 on labor on local trains should be charged to the through train which caused it, for it is the usual road delay.

A. No sir I did not say that, in that sense.

Q. I understood you to say in the illustration I have put to you that where a fast train, a through train, causes a local to wait for it on passenger tracks, an overtime is earned on account of that; that that is an item that should be charged to the fast train instead of the local.

A. Yes sir, but that is not a parallel case with this line question which you put.

Q. I may not have formed my question correctly. That is the idea I want to get at.

A. That I should say would be all right because the delay caused

by that thing certainly should not be attributable to any fault of the local train.

Q. Fuel I presume is another one of the chief items as you worked that up in the Cotton Belt case. Would the actual figures you worked up on fuel cost between local and through trains on the Cotton Belt, apply generally on the Iron Mountain?

A. I presume that those proportions would be applicable in a general sense to the Iron Mountain, or it ought to be.

Q. That is, you mean the relation in the cost between the two classes of trains?

A. They ought to be unless there is some difference in conditions on the Iron Mountain that might change the relations.

1458 Q. Do you know any conditions between those two roads (you have been General Manager of both) that would change the relation of the fuel cost between them, as to the proportion consumed on the local as against the through, or the through as against the local?

A. I do not know of any conditions that would change those relations on the main line of the Iron Mountain as compared with the Cotton Belt—the Cotton Belt Railroad is mostly main line. The Iron Mountain main line is a very similar road through Arkansas, as to grades and other things—I guess the Iron Mountain is a little better than the Cotton Belt, some parts of it—and of course the Iron Mountain has other divisions, like your road from Little Rock to Fort Smith, that used to be very different from the Cotton Belt. I guess it has been improved now.

Q. It has all been improved. You must not indicate that anything going out of Fort Smith has not been improved or we will have a falling out.

A. In a general way the test on the Cotton Belt ought to reflect the general average conditions.

Q. That is all I am after. The detail may be different. You have taken that test on the Cotton Belt as a representative one and I want to know whether the proportions would be representative on the Iron Mountain.

A. Yes I used that largely as a basis for my calculation.

1459 Q. Now here are two other items that I find in the classification of what the expenses are: one is the water supply and the other is lubricants. I notice they are different so I will ask them separately.

Q. Is there any difference of expense of water supply on a local and on a through train? If there is, I would like to know what would be the difference, estimated on car or engine mile basis, or any other basis you could reach?

A. Well, my judgment is that a local train would use more water and more oil, per train mile, than the through train. In making that statement, I will explain the reason——

Q. I don't care about going into detail. I understand it is a small matter, but I would like to get at something definite; if more, how much more?

A. I can't say how much more, without data or figures on that subject.

Q. Give your judgment.

A. It ought to be considerable more on a local train, both in the consumption of water and oil, on account of the large amount of switching that a local engine performs on all of the heavy local divisions——

Q. I understand; there will be no dispute about that.

A. —but what the proportions are, I am not able to say.

Q. Would it be double?

A. I don't know; I could not answer that.

1460 Q. How about your lubricants?

Mr. MOORE: He included that in his statement.

Mr. HILL: I did not understand that.

Q. You say you could not give any estimate on either one of them?

A. I could not say, proportionately. It is a matter that is so insignificant or negligible, that I did not consider it worth looking into.

Q. Under the head of "other train supplies" and "other locomotive supplies", how would a train mile, for the train, and engine mile for the engine——

A. "Other supplies" you say—on other supplies?

Q. The other supplies, whatever they might be.

A. They would also be a very small item, the proportion as divided between the local and through freight; on a train mile basis it should be much larger to the local train, on account of the shorter mileage.

Q. I believe you say that is one of your infinitesimal items?

A. It is a small item.

Q. Now, there is the question of dispatching trains: there is a good deal more expense on that on the through, is there not?

A. In the aggregate, yes sir; but in detail, I should say that the dispatcher's duties ought to be divided as to the lengths of the runs of the respective trains.

1461 Q. That would be a train mile division of it, wouldn't it?

A. Yes.

Q. You think that could be fairly made?

A. That could be made, yes, sir.

Q. The same features, I presume, would belong to the superintendent and train master, as well as the dispatcher?

A. I think it would run all the way through the transportation, as far as the supervision went.

Q. That is on the train mile basis?

A. No, not on the train mile basis, but on the basis of the respective lengths of the hauls. I think there ought to be a greater ratio of expense charged for that service on account of the character of the service. Strictly speaking—on the basis of train miles—that does not mean what I mean.

Q. What do you mean?

A. I mean that there is as much additional effort and work per-

formed by the superintendent, and by the train dispatchers and their assistants, telegraph operators, etc., as the respective lengths of the hauls of the two classes of trains.

Q. Two classes of trains?

A. Yes sir; for instance, with the average state business, his length of haul is——

Q. You say "average state business"; that is getting away from our question. We are talking about through and local. You have made that division and I am trying to hold right down to
1462 it; I want to get at your——

A. That was in one respect; now you are considering the railroad as a unit.

Q. I am trying to consider two trains, one of local freight, and the other of through freight, according to your division made on the Cotton Belt test; that is what I am trying to hold this inquiry down to. You have given a certain way to get at your expenses and you have testified how you get at them; after you get that expense—local and through—you arrive at the state and interstate; I want to call your attention as to the local and through.

A. I would not want to give you a formula for making the division without giving the matter proper investigation and consideration, because I would be committing myself to something that I had not considered in that light.

Q. Let us consider that for a moment.

You take a dispatcher, he has to spend more time and effort in moving those through trains, than on the locals, does he not?

A. No sir; the business of a local train is at every other station along the line——

Q. Does it not move on through schedule? I tnink you have testified that.

A. Yes, it moves on schedule, but at the same time there is a great deal more detail connected with the transaction of the business at the different local stations along the line, than there is with the train that starts from one division point and simply has
1463 to be moved over the road to the other end of the division, as across a bridge; that is the difference.

Q. But your local is a fixed quantity?

A. The local gathers up all the business; stops at every station and does the work.

Q. You have testified that the other trains come through whenever they get ready. There is your fixed quantity, and you have to get the other trains to meet that fixed quantity?

A. No, sir, there are scheduled through trains.

I stated that the through trains ordinarily were not run unless there was an engine load, and in case there was not an engine load, the dispatcher or superintendent would annul or abandon the running of that train altogether until the time for the next train. Under other conditions of unequally balanced traffic the crews on the through train might be run in one direction alike, without any train. In that case there would be no tonnage for it and no load, but that would be done for the purpose of equalizing the power, or

balancing it, to get it back to the point where it would get the movement of traffic.

Q. What I am trying to get is the actual facts.

A. I am trying to give you the facts. The local train runs there regardless of the load to be moved from the terminal where it starts. It may start with one car, or ten or a dozen, and it stops at each
1464 station and does the work to be performed down there, switching. Sometimes it is delayed ten minutes and sometimes an hour and a half, and that train has to be cared for until it comes to the end of its run. While it is true that it keeps out of the way of these through trains, still it has to have the care of the superintendent and the dispatcher in the detail.

Q. Did you take the time on the road of these through trains, as a basis?

A. The basis would be somewhere in the relation to the performance of what the trains produce.

Q. What would the production of the trains have to do with the cost of the train dispatcher sending those up?

A. That would be simply a method of getting a factor upon which to make some apportionment or division.

Q. Is there any different relation in dispatching a train loaded with lumber, than a train loaded with coal?

A. No, there is not any difference in them.

Q. You don't want to put that on a revenue rate division, I presume, Mr. Doddridge?

A. I say that would not be any different, the different kinds of freight the trains carry, unless it is a fast stock train, it might take more attention; and yet, a fast train, after it has once started on its journey, if it makes its time it is very little trouble to the dispatcher, because he figures it all out beforehand; turns it loose and lets it go.

Q. Which is on that division the longest?

1465 A. Which is on the division the longest?

Q. Yes, the local or the through?

A. So far as the local run is concerned, it is on the run probably longer than any other train.

Q. Under the dispatcher's orders longer than the through?

A. For the number of train miles it makes, yes.

Q. Would that be a basis? I am trying to get at a basis.

A. I have not said that; that particular feature could be worked out on some theory or on some arbitrary basis.

Q. I want facts, I don't want something arbitrary or theoretical —some actual division of operating method.

A. I don't know that I can be of any assistance in getting at any specific method of making such a division, or arriving at any definite facts, except as to testify as to the conditions that prevail——

Q. Well, we will just pass up that proposition as something that you are not capable of making any division, per train, on.

A. It is a matter I have not given any thought to, and I don't care to go on record as to a definite rule by which to work it out, without doing so.

The local train is the train that does the peddling business at every station; it is on the road all day.

1466 Q. Let us see if you can work out anything on maintenance of way. I believe you testified about that, haven't you? I questioned you about a loaded car in a local freight train——

Mr. MOORE: You have been over that.

Mr. HILL: I was thinking so; I am not certain.

Q. What did you say?

A. I say, under equal conditions of load and speed, the wear and tear of the two cars would be substantially the same, there would be no difference; but I think I also testified as to the tare weight. In the case of a local train the tare weight that each ton mile produced was 4.09 tons——

Q. You are talking about interstate business now.

A. No, I am talking about a comparison—well, yes, I am, interstate——

Q. You have gone and made your division in the Cotton Belt on a basis of local and through, and that is what I am trying to question you about.

A. The two cars, under the same circumstances and conditions as to load and speed, the wear on the track would be the same.

Q. Mr. Doddridge, you have testified about a division of expenses in terminals; would that same basis apply to the facilities of the terminals, buildings, fixtures and grounds?

A. I don't remember what I testified to as to that.

1467 Q. You have given us your terminal method of getting a division of terminal expense: I am asking you if that same method would run through maintenance of buildings, fixtures and grounds?

A. It takes into consideration all of the facilities for the transportation of business.

Q. Maintenance, as well as operation?

A. Maintenance as well as operation——

Q. That is what I presumed, but I don't believe you have stated it fully before.

A. —which would include the tracks used for business purposes.

Q. What you have said about this division of expenses between local and through freight, would that apply to local and through passenger trains?

A. Not in the same proportions, exactly; a passenger train does not use the facilities to anywhere near the extent that the freight uses them——

Q. For maintenance of equipment, what basis would you put that on?

A. I don't know what I would say about passenger cars, without giving the matter some thought.

Q. Could you do it on a car mile basis?

A. I don't know whether that would be a fair average of it or not. There might be some difference of cost come in there that I haven't thought of.

In my testimony as to the elements of extra cost, I don't think I specified car maintenance as one of the elements. I don't think I did.

1468 There is an element of extra cost in the car maintenance, in the additional stops of the train doing the local business.

Q. You explained that about the freight. Would the same——

A. I was just thinking now what elements of extra cost might come in the maintenance of passenger train equipment you are talking about, and I say there is an element of extra cost in the maintenance of equipment, due to the extra stops, and there may be some other items I have not thought of.

Q. That would be practically the same proposition as the freight, minus the switching?

A. No, the freight service is considerably different in very many respects.

The equipment of passenger trains would receive its extra wear in stopping and from the friction of the brakes on the wheels and some other parts of the machine.

Q. You have that same friction on a freight train, don't you?

A. No, not in the same degree. A passenger train that is running at a fast rate of speed when she put for the station and starts in to stop, stops quickly, and that element of cost is quite considerable; not only on the tracks used, but on the wear of the wheels, which are an expensive part of the equipment. The wheels——

Q. I am not caring about details; I am trying to get your opinion as an operating man, as to how you divide those and get some basis.

1469 A. I haven't thought it out. Those are questions of detail that require reflection and consideration before a man can answer offhand.

Q. Did you not have to take all of these elements into consideration when you evolved your revenue theory of so much extra cost?

A. In a general way, but I did not go into the detail of the various accounts.

Q. It must have been pretty general then, was it not?

A. No, because elements of extra cost are based on some pretty large items.

Q. I have tried as best I could, to get you to particularize on these various items that you say go to make it up, and if you are unable to make any opinion on that, I would like to know how you arrived at a grand total on it.

A. Of course, I can't very well give an offhand answer to technical questions of that kind, without giving them particular thought.

Q. You would have to consider every one of these technical questions I have asked you, to form an intelligent opinion?

A. No, I can form a good many from a general basis, of experience, without taking up the classified accounts.

Q. Sort of an intuitive knowledge, is that it?

A. No, sir, it is not intuition exactly; it is a knowledge based on a good many years of practical contact with the actual physical things and facts, but at the same time——

1470 Q. I am trying to get you to tell me how you arrived at these actual physical facts and things, and I seem to be failing to get you to express yourself on it.

A. I don't know as to the details of the accounts, specifically, and I would not want to go into that without any preparation and answer them offhand, and say, so much for this and so much for that, should be charged here and there; because if I did I would put myself on record, and might be very wrong about it.

Q. This grand total you have reached is made up of all these elements you have been talking about?

A. It is made up on the business itself, and it is a larger unit, based on larger principles, than the——

Q. It is made up of larger things, then, than actual cost of operation?

A. It is made up of larger things than the small details of the cost of operation.

Q. Is maintenance of equipment a small detail of operation?

A. In the whole it is not, but it would be, as applied to the details that go to make it up.

Q. On the freight proposition—through and local trains are the only kind you run, are they not?

A. Generally speaking, the revenue trains are through and local trains, except that there are different kinds of through trains.

1471 Q. I am asking you for a division of those. You predicate your whole judgment and your test upon that division, and I seem to be unable to get anything specific from you. I want to know how you can reach a specific, definite and certain conclusion on this subject, without being able to tell the component parts making up that conclusion?

A. I am not qualified to take up the 124 Interstate Commerce Commission accounts and say in detail how much this, or that or the other one, would be charged, without giving the matter special investigation.

You are asking me to do something that I don't feel qualified to do.

Q. Have maintenance of way and maintenance of equipment been leading items of expense?

A. Yes, sir; and if you want to know what the difference is, in my opinion, on maintenance of way, I can give you that as between state and interstate traffic.

Q. Between state and interstate? That goes back to the other question.

A. That is what we have been discussing, you know, except now.

Q. I am trying to get back to your premise. You are premising your difference of state and interstate on local and through, and I am trying to get back to your premise, but you come back to the conclusion, instead of the premise, and so we will leave it at that.

1472 Mr. Doddridge, I want to call your attention to this statement, made in your Missouri case testimony, page 323, of the Frisco case. I will have to read you the connection, so you can get the whole.

"Q. It does not follow at all that that whole train load is for a particular company or for a particular industry. Each car may go to a separate track, and they have got to bring an engine around there and break up that train, and set up the cars on the proper tracks.

Now, don't you think that distinctive function of simply breaking up the train and setting up the cars on the appropriate track involves more labor, and consequently, more expense than that function at the way or country station?

A. Well, the same expense, Mr. Lehmann, at that terminal, is common to all the business, both local and through.

In order to make a relative comparison, you must bring it down to some unit, and that unit probably would be the carload or the car. Divide the total expense by the number of cars handled, and then you could ascertain which would cost the most.

Is that right?

A. Well, I presume it is right; it depends on whatever they are talking about there.

Q. Does not this explain itself, what it is talking about?

A. I don't understand exactly what he was getting at there, unless——

Q. It seems to be a question of dividing the terminal expense between local and through trains, that you were just testifying about. Look over it (handing witness papers) and probably you can catch the connection better.

1473 Previous question read.

A. I do not understand exactly what he was getting at there.

Q. It seems to be a question of dividing the terminal expense between local and through trains, that you are just testifying about. Look over this and perhaps you can get at the question better.

(The witness here examines the record in the Missouri Rate case.)

Mr. MOORE:

Q. Do you understand it?

A. I understand the matter he was talking about.

Mr. HILL:

Q. My question is, was this a correct statement of your testimony given in the Missouri Case.

Mr. MOORE: That is objected to. His testimony in the Missouri Case in not competent in this case, unless it is correct in this case.

Mr. HILL:

Q. I will put my question this way:

Did you not testify in the Missouri Rate case what I have just read to you from the record which you have just read?

Mr. MOORE: I object to that question. If you look at the record you will find he was testifying about conditions which are not in this case.

Mr. HILL: You can put in as much of the record as you please, Col. Moore. But I want to know if he testified to this in the Missouri Case, and any part you want to put in I have no objection to, at all.

1474 Mr. MOORE: The objection I have to it is this: Why not ask him the question right in this case? Why prove a fact by saying "Didn't you say so and so in the Missouri Case and if you did is that true in this case."

That is not competent. Every man knows that. That Missouri Rate Case record is competent only for the purpose of contradicting the witness and not competent for the purpose of impeaching the witness.

Mr. HILL: It is competent to refresh his memory.

Mr. MOORE: Ask him that.

Mr. HILL: I am asking him that.

Mr. MOORE: The only purpose for which it is competent is for the purpose of contradicting him.

I asked him to look at it and he finds it is not applicable to any condition in this case.

If you go back two pages in that record you will see that is a reference to a condition which does not exist here at all. It is comparing local switching with the switching at large terminals in cities like Kansas City and St. Louis.

Mr. HILL: I think it is competent just the way I read it and I ask that he be required to answer the question.

I will ask if he did not testify to what I read in the Missouri Rate Case.

Mr. MOORE: It is not a question of getting in the evidence but a question of the proper mode of getting it in.

1475 Mr. KIRBY: As we understand it, we asked him if there was any method of getting it, and we understood him to say there was not. Then we read this and asked him if he did not there state there was a method.

The MASTER: The rules of evidence are so much relaxed in a proceeding of this sort, that it has been decided by Judge Sanborn, when this question was directly before him, which might seem to have any bearing on the case, or which even if the Master was of the opinion, had known it was proper to go in, and the court might decide whether it had any bearing on the case thereafter, and the only thing exempt was where it was so obvious and showed on its face it could have no relation to the case at all.

So I adopted that rule and following it will let this go in. It may be it will have but little bearing on the case. But so far as I am concerned I will admit it.

Previous question read as follows:

I will put my question this way: Didn't you testify in the Missouri Rate Case what I have just read to you from the record which you have just read?

A. I presume I did.

Mr. MOORE: If you have any explanation to make about it, Mr. Doddridge, make it now.

A. I will say in that connection, after examining the record, that what brought the question up was certain questions with ref-
1476 erence to the large terminals in the state of Missouri, namely, St. Louis and Kansas City. Mr. Lehman asked about the cost of switching cars and distributing them in those terminals.

That is a condition that is dissimilar from the conditions existing in Arkansas.

Q. Now I will call your attention to this testimony, just preceding what I have quoted to you:

"Are not the operations, when you get down to it in addition to having this higher priced property, which is the base upon which the terminals rest, and the higher paid assistants to do the work, haven't you more actual operation to go through with in either detaching or setting out a car in one of these great commercial centers than at the way station?

A. Yes, because the commercial center or terminal yard is of an entirely different character than that side track along the road.

When the train reaches the terminal and it is broken up and distribut*ive*, of course there are all those operations.

But when you come to analyze the cost and pull it down to the unit of a single car, taking into consideration the large volume of business, and the large number of cars handled there, I would not be surprised if you found the cost per car did not very much exceed the cost per car at the local point.

Q. That is just what I am getting at, the cost per car, because that bears upon this question of relative expense of way and through freight."

1477 That is correct, is it?

A. Yes, sir, that is correct.

Q. I did not finish the quotation:

"Now, take it on the car, or setting it out, in the case of the way freight, at the country station, it is done by the train crew itself. They are right on hand to do that work, and they do not have to go there for that purpose. They are already there in the course of pulling their train over the road, and they lose no time, and can do it as quickly as if they were specially organized for that purpose, can't they?

A. That is one of the elements of extra expense of local freight.

Q. I am now considering that separate element of extra service. We do not want to charge that twice. I want to see how that compares with the same function performed with respect to the through freight. Now, when your through freight comes into the commercial center, the crew leave it. They do not do any of the local work. They simply attend to the road haul?

A. Yes, sir, that is all.

Q. They leave it?

A. Yes, sir.

Q. It does not follow at all that that whole trainload is for a particular company or for a particular industry?"

That connects up with what I first read to you.

That is correct, is it?
A. Yes, sir.

1478 Mr. MOORE: Before re-examining Mr. Doddridge I will want to look over the notes of his cross-examination.
In the mean time I will put in another matter.

R. E. KIMBELL, recalled, testified as follows:

Redirect examination.

By Mr. MOORE:

Q. Mr. Kimbell, have you prepared a statement showing the operating revenue and operating expenses, taxes, etc. of the St. Louis, Southwestern Railway for the six months ending Dec. 31, 1907?
A. I have.
Q. Were these statement- made up under your directions so you can state that they correctly reflect the facts?
A. They were.
Q. These are correct statements from the books of the company?
A. Yes, sir.
Q. Will you file those statements as exhibits and state what they show in regard to the earnings and expenses, etc., during the period covered by them, and the net result of dividing the expenses upon a revenue basis?
A. I file as Exhibit 32 a statement showing operating revenue, expenses, taxes, outside operations, etc., in the state of Arkansas for the six months ending Dec. 31, 1907.

1479 This Exhibit 32 corresponds with a similar exhibit, previously submitted, exhibit No. 11, which was for the year ending June 30, 1908.
The present exhibit, No. 32, covers the six months ending Dec. 31, 1907.
In answer to the latter part of your question, Judge Moore, I will say that the expenses are not divided on this statement but are divided on the exhibit that will follow this.
I might mention, before leaving this statement Exhibit 32, that a reference to it in comparison with Exhibit 11 will show that the relation of the different classes of traffic is very similar for the six month period and the twelve month period.
For example, state freight revenue for the twelve months ending June 30, 1908 was 7.65% of the total revenue.
This same item for the six months ending Dec. 31, 1907 is 7.56% of the total revenue.
The item of interstate freight revenue shows 69.44% for the year ending June 30, 1908 and 69.80% for the six months ending Dec. 31, 1907.
The passenger revenue, state, for the year is 10.66% and for the six months 10.76%
Passenger revenue, interstate, is 7.40% for the year.
And 7.46% for the six months.

1480 The miscellaneous revenue for the year is 4.85%
For the six months 4.42%.

I mention these facts to show that the proportions travel very well together for both periods.

The exhibit referred to is marked "R. E. Kimbell 32."
Said exhibit is in the words and figures following to-wit:
For Exhibit 32, see Volume 8, page 5362.

1481 I file as exhibit 33 a statement which shows the operating revenue, expenses, taxes, rentals, etc., that results from handling state freight and passenger traffic only.

Q. For the same period?

A. For the six months ending Dec. 31, 1907.

This statement Exhibit 33 corresponds with a similar statement previously submitted as exhibit 12-*a*.

Q. Covering the fiscal year?

A. Covering the fiscal year ending June 30, 1908.

Q. What does that statement Exhibit 33 show to be the net earnings from freight and passenger traffic on a freight revenue basis.

A. On the two combined?

Q. On each separately.

A. Freight, $83,837.17.

Passenger, $15,137.95.

Q. What does it show to be the freight earnings on the basis of additional cost of 50% in conducting intrastate traffic?

A. $45,393.03.

Q. What is the result on the same basis as to the passenger traffic, on the basis of 25% additional cost?

A. A deficit result on that basis of $4,595.23.

Q. What is shown upon the basis of increased expense incident to the conduct of the intrastate traffic of 100%.

A. A balance is shown of $10,418.91.

1482 Q. And what appears as to the passenger earnings, attributing 15% additional cost to that class of intrastate traffic?

A. The balance is shown on that basis to be $2,668.98.

The exhibit referred to is marked "R. E. Kimbell 33."
Said exhibit is in the words and figures following to-wit:
For Exhibit 33, see Volume 8, page 5364.

1483 Q. What is the exhibit?

A. Exhibit 34 explains the formula used in arriving at the extra cost of handling state traffic on the several bases, as shown.

The exhibit referred to is marked "R. E. Kimbell Exhibit 34."
Said exhibit is in the words and figures following to-wit:
For Exhibit 34, see Volume 8, page 5366.

1484 Q. What is the next exhibit?

A. Exhibit 35 contains the miscellaneous traffic statistics for the six months ending Dec. 31, 1907.

These results are shown in exactly the same way as previously shown for the year in exhibit 14.

The exhibit referred to is marked "R. E. Kimbell Exhibit 35."
Said exhibit is in the words and figures following to-wit:
For Exhibit 35, see Volume 8, page 5368.

1485 Redirect examination of W. B. DODDRIDGE continued as follows:

By Mr. MOORE:

Q. On cross examination you were asked if certain classes of trans-state freight, referring to refrigerator cars and live stock, did not have a larger return empty movement than any other class of freight; and your answer was you guessed that was true, in a general way.

Now the question related, as I said a moment ago, to trans-state freight, which has a perferred movement.

I want to call your attention to the language used, "if it did not have a larger return movement than any other class of freight:"

What did you mean by the words "other classes of freight?" Did you mean than all ordinary freight, or all intrastate freight? Or if you did not mean that, what did you mean?

A. I was comparing the empty movement of that class of freight with a similar class of long haul business.

1486 Q. What I want to get at is this: Did you mean when you say, "any other class of freight," did you include any other entire group, such as interstate or intrastate? Did you mean to say that had a larger empty return movement than intrastate freight, for instance, as a body?

A. No, sir, I did not mean that, because intrastate freight as a body has a large percentage of empty car mileage for the reason that there is no reciprocal loads, as a general rule.

The cars which are used in this intrastate freight movement, may be utilized in a section of the country in which they are carried, by the movement of the intrastate freight, but in other business.

The idea that I wanted to convey is, that there is the return movement in the same kind of freight.

Q. You mean when you say, other class,—what I understand is tha you refer to commodities and classes and not to any large group of freight: Is that what you mean?

A. That is what I mean.

Q. You stated in answer to the direct question on cross examination that the traffic on the St. Louis, Iron Mountain & Southern road and also on the Cotton Belt road was the same kind, whether state or interstate:

I want to ask you if you mean by that statement to imply there was a similarity in tonnage or whether you referred to the
1487 character of freight carried in the two departments of tonnage.

A. I was referring to the character of the tonnage.

Q. Referring to cotton, for illustration, and also to grain: are those commodities carried in both departments of traffic, state and intertstate?

A. Yes, sir.

Q. In what proportions are they carried in each kind? I do not mean to state it exactly, but give it in a general way.

A. The relative proportion of cotton carried as intrastate freight

is very small; the relative proportion of cotton carried in interstate freight is very large. The intrastate grain compared with the interstate grain is in somewhat similar proportions.

Q. Is it generally true that the proportions of the same kind of traffic which is carried in the two kinds of service are comparable?

A. Are comparable as to what?

Q. As to tonnage.

A. The exact amount of tonnage can be ascertained from the record.

Q. What I asked you was, if the two kinds of tonnage are similar or dissimilar, the quantity of commodities and classes carried in the two kinds of service.

A. The volume, of course, is dissimilar.

Q. When you say the traffic is the same kind, whether
1488 interstate or intrastate, tell me just what you mean?

A. I mean it is the same kind as to the commodity, as to the classification of the commodity.

Q. Let us assume that a given kind of freight is carried, say one carload twenty miles and another 75 miles: does the difference in the length of its haul create any difference in itself of the cost of handling those two shipments?

A. Yes, sir.

Q. You were asked on cross-examination if there was any difference in the cost of carrying the same kind of freight on the same train, and you stated there would be no difference in the train cost: what did you mean by that statement?

A. I meant that the same kind of commodity under the same circumstances, and conditions, the same car carried the same distance, there would not be any difference in the cost, no matter whether the freight was classified as state, interstate or otherwise.

Mr. HILL: You mean cost per ton per mile?

A. By any measure or any unit you might apply to it.

Mr. MOORE:

Q. You also stated that jobbing freight out of Memphis and Fort Smith, distributed over the state of Arkansas, the length of haul would probably be the same as for interstate freight moved under similar conditions: Memphis and Forth Smith are both border cities, aren't they? One on the east and one on the west border of the state of Arkansas?

1489 A. Yes, sir.

Q. In view of that fact, and in view of the fact that Little Rock is located in practically the geographical center of the state, I want you to state if in your judgment the length of haul would be the same on jobbing freight shipped out of Little Rock and from those two other points?

A. No, sir, I don't think it would. In making the statement yesterday, I had in mind the system of averages; and after my attention was called to the matter I am satisfied that the length of the haul from Memphis and Fort Smith would be much greater than from Little Rock.

Q. I merely call your attention to Little Rock to illustrate that phase of it.

I want you to state what the average length of haul from those places would be, as compared with the average length of haul from interior points in the state?

A. I hardly know how to answer that question without making some investigation.

Q. Do you know what the average length of haul of intrastate business in Arkansas is?

A. The statistics show it to be 70 miles on the Iron Mountain and 44 miles, I believe it is, on the St. Louis Southwestern.

Q. What, in your judgment, would be the average length of haul of a shipment from Memphis and Fort Smith: you can give it
1490 either in figures or as compared with the figures named.

A. I should think it would be more than twice as much.

Q. You stated on cross-examination that the local trains were "feeders" for the through trains: to what extent is that true?

A. A certain percentage of the local business carried on local trains is business that is distributed throughout the state, or business that is collected by these trains and carried to centers or junction points.

The percentage of the tonnage that has any direct or indirect relation to the through business, I do not know.

Q. I will call your attention to a station that was referred to yesterday, Jacksonville: Jacksonville is situated ten or twelve miles north of Little Rock on the Iron Mountain road. Is that a regular station?

A. Yes, sir, I think it is.

Q. Are local trains scheduled to stop there?

A. You now refer to passenger trains?

Q. I am referring to both kinds of trains.

A. Local trains I believe stop at Jacksonville, according to the time-card, is my recollection.

Q. Do regular trains stop at Jacksonville?

A. Local trains are scheduled to stop at Jacksonville, I believe. In other words, it is not a flag station for that class of trains.

Q. You have operated down there sufficiently to know about the condition of the country as well as the road down there, I
1491 take it.

I want you to state in your opinion what proportion of passengers get on the train at Jacksonville for the purpose of going to Little Rock, as was stated yesterday, in proportion to those who get on for local trips to Little Rock and other points?

A. The proportion of passengers from such a station, that would use the local train to go to Little Rock, or any other similar point for the same purpose, would be in my judgment almost a negligible quantity as compared with the number of people that actually travel locally between such points.

Q. Would that be true as to all regular stations that the local trains are scheduled to stop at?

A. Well, I should say it is generally true to and from stations of that class.

Q. If that is the case, is not the kind of traffic which you have in mind, when you say the local train is a feeder, a very limited quantity indeed, as compared with the regular traffic from these local stations, not including flag stations, but the regular, scheduled stations?

A. Yes, in fact in making my answer on the local feeder proposition I had in mind freight trains rather than passenger trains.

Q. Let us take it up in regard to the freight trains. Take Austin, for instance. Austin, I believe, is 25 miles north of Little
1492 Rock. You know something about that place, don't you, and conditions there? Is not that about an average country town along the line of the Iron Mountain road.

A. Yes, sir, I should say so, unless it has changed greatly in the last few years.

Q. In your judgment what is the character of traffic as to which the local trains would be treated as a feeder, assuming now a shipment from Austin, taking Austin as the station.

A. The character of the traffic would be cars that would be loaded perhaps to go a long distance, may be picked up by the local at Austin, carried to Little Rock and there placed for economical reasons in some train and carried to its destination, if it were going in that direction.

Of course, if the traffic were going in the opposite direction it would be carried to the end of the local run, in the other direction.

Q. Tell me what proportion of the traffic from Austin is carried in that way, as compared with the local traffic to and from that place.

A. I would give it as my judgment that that kind of traffic would be very small, unless it would be traffic originating at some industry say like a saw mill, or something of that sort.

Q. What proportion would that kind of traffic constitute, originating there for an industry or sawmill,—that is, from that
1493 station Austin of which I spoke?

A. It would be a very small part of the traffic of the station; a very small part.

Q. To what extent are the facilities which are created under the operation of the separate coach law of Arkansas applicable to interstate traffic? I mean the colored coaches and colored waiting rooms?

A. In my judgment the facilities of the character you name are used by a very small percentage, relatively, of interstate colored traffic.

Q. Why is that the case?

A. Well, in the nature of things the colored people are not usually in the habit of making long journeys, but they do make short trips a great deal. Naturally, the short trips would be largely intrastate.

Q. How does the speed of local passenger trains between stations compare with the speed of the ordinary through trains?

A. The local passenger trains, on account of the time they lose

at stations in the transaction of the local business, usually run at a high rate of speed between stations and probably under general conditions as fast in that respect as any other passenger trains.

Q. How does the danger of wrecks compare on the two classes of trains?

A. As a general proposition I do not see, based upon my experience, that there is very much difference in that respect.

1494 Q. Do you know of any comparative statistics in that respect as between through trains and local trains? Do you know whether such statistics are kept or not?

A. No, sir, I do not know that such statistics are kept.

Q. You refer to casualty risk, as one of the additional expenses in the conduct of the intrastate passenger business: what class of casualties do you have in mind when you refer to that character of risk?

A. I refer to the casualties arising from the handling of passengers at and about stations.

People are more apt to receive personal injuries around and about trains, who are not in the habit of traveling regularly.

If you handle four or five of one class of passengers to one of another class of passengers, the four or five would in the nature of things receive more damage in the way of casualties. That is the difference.

Q. Are those cotton platforms you referred to yesterday used for storing and holding any other kind of freight except cotton? If so, to what extent, and what character of freight?

A. They are used, especially outside of the cotton season, for the storage of machinery or other heavy articles that are received at local stations that can be stored out of doors and not be

1495 damaged by the weather. The use for such purposes is comparatively small.

Q. You stated on cross examination that the cost of the movement of the train is the same whether the cars are loaded to their full capacity or are carried empty, because the crews consist of the same number of men without regard to whether the train is made up of a full load, light load, etc.

How does the loading of intrastate freight, and cars that carry the bulk of that freight, compare with the loading of the interstate freight, in the cars that carry that character of freight?

A. The figures submitted in the Cotton Belt test show that the less than carload cars in the local trains as compared with the through trains, are loaded about one-half; all cars carried in the local trains as compared with the through train; there is quite a material difference. I have forgotten the exact figures.

Q. I do not care about the exact figures, but which is lighter and which is heavier?

A. The local trains are loaded lighter.

Q. How do the local trains compare with the trans-state trains?

A. The difference would be greater, in my judgment.

Q. Mr. Doddridge, I understood you to state yesterday on cross examination, in answer to a question you were asked, if it were not

a fact that the state and interstate business were so interwoven
1496 that it would be impossible to make any division of them, that that was the case:

What did you mean by that statement?

A. I referred to the interweaving of the costs of doing the two kinds of business; the fact that many of the expenses were common and could not be definitely separated.

I did not mean that the number of tons could not be separated, the number of ton miles, or anything of that nature, that is ascertainable from the records.

Q. Isn't it a fact that the revenue from the two kinds of business are kept separate?

A. They can be accurately determined.

Q. Are not the statistics of the two kinds of business kept separately? Does not Exhibit 5 in this case show that?

A. Yes, sir, the general statistics can be separated definitely and positively.

Q. It is the expense, then, you had in mind?

A. I had the expense in mind more than anything else, in making that statement.

Q. When you make that statement in regard to the expenses, do you mean to say that the elements of cost that enter into the two kinds of traffic cannot be separated and ascertained? I do not mean the cost but the elements and the characteristic features of the business that goes to make up the cost, or any difference there may be in the cost of the two kinds of traffic?

1497 A. The elements, of course, can be separated and the exact division of cost can be determined accurately.

Q. I understand that; but what I am asking you about is the elements that enter into it.

A. The elements that enter into the cost of course can be determined.

1498 Q. I believe you have already testified as to the different manner of handling local and through freight, and the difference in the local and through train, in railroad service:

Now I want you to state here the difference you have described in the regulation and conduct of the different kinds of trains — exist.

A. The reason why these differences exist is because of the difference in the character of the service.

The local service is scattered, at small stations, throughout the State. The necessities of the business require prompt service, daily service. The volume of the business relatively is very small. The circumstances under which the business is handled make it impossible to cover a large number of miles.

Q. It is not worth while to pursue that further.

Do the local trains stop at all stations, as a rule?

A. They do.

Q. Why do they do that?

A. They stop to take on and discharge freight, take on and put off cars; and when the business is not sufficient to maintain special switching engines, do the work that the ordinary switch engine per-

forms, such as setting cars to industries, taking out empties,
1499 placing cars at freight houses, or taking them on.

Q. Why is it that those trains are required to give way to trains engaged in the through service?

A. The reason that they give way is that the scheduled time of the local train provides sufficient margin; and then again the time that the local train consumes at a station in doing its work from day to day is an uncertain quantity.

Q. You say the schedule time for the local train gives it time to get out of the way: is that schedule time fixed with reference to the general exigencies of the business that is transacted by that class of train?

A. Yes, sir.

Q. Mr. Doddridge, you stated, as I understood you in your cross examination (at least you did with reference to certain expenses to which your attention was called, I know) that where a local train takes a passing or side track for the through train to pass, the extra cost incurred in the local service should be charged to the interstate or trans-state train, which creates the necessity for the local train to get out of the way.

I want to ask you if that statement is not inconsistent with the regulations which you have just described as controlling the two kinds of traffic.

A. There appears to be a misunderstanding as to what I meant when I said that the extra cost for delay of a local train should
1500 be charged to the through train or interstate train causing the delay.

Under ordinary circumstances, in fact under any circumstances, I do not know that any charge is ever made for a delay of this kind, in the accounts of a Railroad Company.

What I meant to convey was this idea, that if the local train was delayed by some extraordinary circumstance, in consequence of either mismanagement in the running of the train or some other cause that would delay a fast train or a through train in an extraordinary manner, the expense that would be attributable to the local expense, in consequence of such delay should be charged to the local train and not charged as a regular item of extra cost in the handling of local service.

That is what I meant. I think I was questioned twice on that point in cross-examination.

The side tracking of trains and the meeting of trains is an ordinary incident of conducting transportation business.

Q. You were questioned twice on it; once in connection with refrigerator cars and live stock part of the traffic movement, and your answer was probably influenced by that feature connected with those trains. But your attention was called again to trains on the Fort Smith Road and you made the same statement in regard to the general traffic on that road, and that is the reason I am calling your attention to it. I think you must have made the statement
1501 inadvertently rather than through misunderstanding, if that is not your judgment.

A. My explanation covers the idea I intended to convey.

Q. Mr. Doddridge for what purpose are statistics of a Railroad Company in connection with the cost of traffic made on the basis of ton miles?

A. Ton miles are usually used as a measure of efficiency of car loading, efficiency of train service, and for other comparative purposes. The use, however, of the ton mile unit, being an average unit, is limited.

Q. What other units are used in statistics, in connection with the cost of traffic, if you know of any other.

A. There is the car mile.

Q. What is that used for?

A. For the purpose of testing the efficiency and for certain other accounting purposes.

Q. Is there any other unit used?

A. The train mile also is used.

Q. What is that used for?

A. For the apportionment of expenses, sometimes; the division of certain accounts where it is applicable.

None of these units are perfect. They are more or less of an arbitrary character and represent the conditions.

Q. Mr. Doddridge, you were asked yesterday about the du-
1502 ties and the effect of outside agencies: are you familiar with the service rendered by outside agencies?

A. In a general sense, yes.

Q. Do you know of any service they render that affects directly local traffic within the borders of the State—the intrastate traffic—or, have you sufficient knowledge to go into that subject?

A. I am familiar with it only as a general proposition. I think there is no doubt but the industrial department of a railroad affects the local conditions, in the matter of advertising lands, sites for factories, business opportunities and things like that. It performs duties of that sort.

The agents would come almost directly in contact with local conditions and taking the railroad as a system into consideration he divides his labors and applies it among the several States through which the line passes.

There are other classes of outside agencies that solicit freight in competition with other lines, and look after movement of the traffic in and out of the several States.

They distribute advertising matter and they furnish information as to time tables, time cards and other features connected with the transportation business.

Of course they do not feature or specialize their duties. They treat the railroad as a unit and their services are spread over the entire business.

Q. Do you know whether or not any trans-state passengers travel across the State of Arkansas out of Memphis?

1503 A. Yes sir.

Q. Would that class of passengers have two terminals in Arkansas?

A. No sir, they would not. I refer particularly to the Memphis-St. Louis line passing across the State in a Southwesterly direction. They would not have two terminal expenses in Arkansas.

Q. Is that true of both the Iron Mountain and the St. Louis Southwestern?

A. Yes sir.

Q. Have you sufficient knowledge as to present conditions, to state whether that class of passenger traffic out of Memphis is large or small?

A. I do not believe I could qualify as to the relative volume but there must be considerable of it.

Q. If you do not know don't try to state it.

A. I do not know.

Q. Mr. Doddridge, was the classification of accounts which is now kept by railroads, I believe under the order of the Interstate Commerce Commission, kept during the time you were operating the roads? I mean, the same classification of accounts.

A. The same primary accounts, I believe were in use at that time. The details, however, of the accounts are quite different now.

1504 Q. Do you know when the railroads began to use these certain classifications?

A. July 1, 1907, I believe.

Q. Have you had any experience in operation under that system of classifying accounts?

A. No sir.

Q. You speak of "primary accounts." Was there an account of "maintenance of equipment" kept while you were operating; do you recall about that?

A. I think there was, but I am not familiar with the details of the accounts that were kept by the Accounting Department at that time. What I mean is, as to the technical names of the headings. Of course, accounts of maintenance of equipment have always been kept by railroads since steam transportation was invented, under some name.

Q. Are you through with your answer?

A. Yes sir.

Mr. Moore: I think that covers everything I want to ask him.

Recross-examination.

By Mr. Hill:

Q. Mr. Doddridge, how is cotton handled on the Iron Mountain and Cotton Belt roads?

A. In what respect?

Q. I will state the situation to you as well as I can and ask you if it is not correct:

Cotton is shipped into the compressing points and there
1505 compressed, and then shipped to eastern and foreign markets: is not that the way it is handled?

A. That is the way I understand that is done. That is the way it used to be handled, and I presume it is handled that way now.

We called that "localling" cotton: handling it flat from the local stations, and then forwarded it to its final destination, wherever it may be.

Q. Then that local rate which has been paid to carry it into the compresses is taken up and a through rate given to it from its point of origin to its point of destination: isn't that right?

A. I don't know how they handle that in the billing, but I presume it is done that way.

Mr. HILL (to Mr. Roth):

Q. Mr. Roth, can you answer that question; have I stated it accurately?

Mr. ROTH:

A. That is correct, yes, sir.

Mr. HILL (to the witness):

Q. Then the first movement of that cotton to the compress point is necessarily local, isn't it?

A. Yes sir.

Q. And carried on the local trains, probably?

A. Yes sir, I think so.

Q. Cotton is the biggest crop in Arkansas, is it not?

A. I think it is; that is, the largest agricultural crop.

1506 Q. Taking the System as a whole, there are something like a million bales shipped annually?

A. Yes, I believe Arkansas is credited with one million bales.

Q. I believe there is about one—possibly two, cotton mills in existence in Arkansas, is there not?

A. There is one, that I know of.

Q. Where is that?

A. At Arkadelphia.

Q. That has been played out for many years.

A. That is the only one I know of.

Q. There is one at Helena, and I think at Monticello, but I am not sure about that.

Except what little cotton is consumed in the one or two mills in the state, all the cotton is interstate, in its movement?

A. Yes, in the final movement outside of the state.

Q. In your revenue it is put in the interstate revenue, isn't it?

A. I cannot qualify about that; ask Mr. Roth or Mr. Johnson.

Mr. ROTH: Which movement?

Q. I mean the cotton movement as a whole; is it not all interstate?

Mr. ROTH: As a whole it is, yes.

Q. And it is so made up in your exhibits in this case?

1507 Mr. ROTH:

A. Yes.

Q. Mr. Roth, the only revenue from cotton that should be credited to Arkansas intrastate movement, would be the few bales that go to these cotton mills ?

Mr. ROTH:

A. Cotton mills, or mattress factories.

Q. Could you give any sort of an intelligent guess at the extent of that, Mr. Roth?

Mr. ROTH: Do you mean how much of the total cotton business?

Q. Yes; we all know it is very little, but I have never seen any accurate figures of it, and I would like to know if you can give it.

Mr. ROTH:

A. I think it is under one per cent.

Mr. HILL (to witness):

Q. Mr. Doddridge, taking these statements that Mr. Roth has given of the facts about the cotton movement, does it not show that there has been a large use of local trains in this cotton movement, the revenue of which has gone into the interstate movement, and thereby the local train has been a feeder of the interstate business?

A. Yes, sir, in that respect the local train would be a feeder, but in the statistics filed in this case as to the local train service, the cotton carried by the local train is included; it shows for itself. For instance, the Cotton Belt test would show.

Q. Yes sir, I have no doubt of that; but the ultimate movement is as described by Mr. Roth, and the revenue from it has
1508 gone into the interstate revenue?

A. So I understand, yes.

Q. Is it not substantially the same situation with lumber—of course, not in so great a percentage as it is with cotton?

A. I think the conditions and circumstances in the transportation of lumber and rough material, forest products generally—while there is a similarity of conditions, they would be found to be quite different as to the volume, proportions and so on.

Q. I stated that in my question, that the movement was the same with a difference, of course, as to the extent of it?

A. Yes.

Q. But the first movement, from the forest to the saw-mill, is carried on a local train?

A. Yes, I take it that is the——

Mr. MOORE:

Q. Then the second movement of it would be intrastate, if the lumber was destined to a point in the state, but if destined to a point without the state, then it would become an interstate movement from its initial point, so far as the revenue is concerned?

(To Mr. Hill): You called on Mr. Roth for some information pertinent to what you were asking him. I will ask you to let him state about the lumber also.

Mr. HILL: I would like Mr. Roth to do so if he can.

Mr. MOORE: I would like him to state how the inbound lumber accounts——

1509 Mr. ROTH: Lumber is not handled the same way as cotton, so far as our accounts are concerned.

In the first place, there is the local movement in, which is billed at a local rate, a rate fixed by the Arkansas Commission—so many cents a hundred pounds, according to the distance it is hauled; up to fifty miles it is two cents.

After the lumber reaches the mill we do not know what becomes of it, or its final destination. A certain percentage of that lumber is re-shipped, maybe to interstate points, maybe to state points, but we have no means of telling.

The outbound rate is from the mill point and not from the point of origin, as it is in the case of cotton; it is two separate and distinct movements, one into the mill and one out of it.

Mr. MOORE:

Q. How are they represented in your accounts; that is what I want to get at?

Mr. ROTH: The inbound revenue is all treated as state business, in Arkansas.

Mr. MOORE:

Q. In your accounts?

Mr. ROTH:

A. Yes.

Mr. HILL: I think that is right. It is different from cotton in that respect.

The point I am getting at is this (you can answer, or Mr. Doddridge, whoever can do so): that the first movement is carried on the local trains to the saw-mill or planing mill?

Mr. ROTH:

A. Yes sir.

1510 Mr. HILL:

Q. And then the second movement is carried—dependent on its final destination as to state or interstate, on a local or through train, as the case may be——

Mr. ROTH:

A. Yes.

Q. —or rather, more to the length of the haul, or whether it is state or interstate?

Mr. ROTH:

A. Yes, it would depend on the length of the haul.

Mr. HILL:

Q. Here is another feature about that, Mr. Roth—I don't believe either my question or your answer was quite accurate; Mr. Kirby called my attention to this fact, and it is undoubtedly true, that the second movement of that lumber from the saw-mill would be on

a local train, unless the saw-mill happened to be at a division point, wouldn't it?

Mr. ROTH:

A. Undoubtedly.

Mr. HILL (to the witness):

Q. Now, Mr. Doddridge, we will go on with you, along this line: take your coal, how is that handled as between local and through? I am speaking of that now in the same connection.

A. I presume that coal is handled mainly on coal trains.

Q. You mean by "coal trains" trains that run nothing but coal?

A. I mean, trains that originate in the district where the coal is mined, and I don't mean that coal is not handled on local trains in its distribution—I presume it is, but I am not familiar now with how that train service is handled today.

1511 Q. An entire coal train might originate out of the "Jenny Lind" mine, but it would probably be broken up and get on your locals?

A. Yes, it goes to the point where it would naturally be distributed.

Q. And there would be a vast volume of that that would also go into your through trains: don't you ship any of your Arkansas coal to Texas and Louisiana?

A. Yes. That is the way it would naturally be handled.

Q. Now, take grain: is not the reverse the movement on grain, as compared with cotton: it comes in through trains (that is, grain products), to Little Rock or some other distributing point, and is there carried on the locals?

A. It would be carried on the locals, of course, if it had a destination within the local run: that is what I mean to say.

Q. Now, Mr. Doddridge, that grain (except what little would originate in Arkansas), would go into your interstate revenue, wouldn't it?

If you don't know you can ask Mr. Roth or Mr. Johnson there.

A. I don't know.

Mr. ROTH: Any grain on which we would know the point of origin would go to the interstate business.

Mr. HILL:

Q. What is that?

1512 Mr. ROTH:

A. If we knew the point of origin, we would put it into interstate business, if the point of origin was outside of the state of Askansas; but there might be a car of grain from a Kansas point, into Little Rock, that would be re-shipped from there in small lots, that we would know nothing of.

Mr. MOORE:

Q. Where would that go?

Mr. ROTH:

A. State business, as far as the outbound movement from Little Rock.

Mr. HILL:

Q. The point is this, Mr. Roth: the revenue derived from the grain movement (except what little grain is grown in Arkansas), is carried into interstate revenue in your exhibits here.

The grain originating in Arkansas is a negligible quantity (to use this good word), is it not?

Mr. ROTH:

A. Very much so.

Mr. HILL:

Q. You might describe that as infinitesimal?

Mr. ROTH:

A. Almost.

Mr. MOORE: Mr. Roth, I want to cross-examine you on that:

Q. Assume that grain is brought into Little Rock, or some other center in the state, and shipped from there to some other point: how is that carried in your accounts?

A. That depends entirely on the basis of the freight; if it is finally re-shipped as a through freight, it would be in the interstate business, but if it is re-shipped as local, it would be state business.

Q. And carried in your accounts accordingly?

A. Yes sir.

1513 Mr. HILL (to the witness):

Q. Now, Mr. Doddridge, after hearing these explanations about the movement on cotton, grain, coal and lumber, the four great products of Arkansas, I suppose you are ready to state that the local train is a great feeder of the interstate traffic of the state, are you not?

A. Well, the local train is a part of the general machinery of the transportation system, and it has its functions—as has been stated—and in that respect it is a feeder. It is not distinguishable except in the character of the work that the train performs and the method by which it performs it.

Q. It is the arm that reaches out and gathers up your interstate traffic throughout the state, isn't it?

A. That is true all over the country, west of the Mississippi River.

Q. We are talking about Arkansas. It is true in Arkansas, isn't it?

A. Yes.

Q. Now let us talk a little about this length of haul out of Memphis, compared with Little Rock and Fort Smith: when you were General Manager of the Iron Mountain, did you not have jobbers' tariffs in effect that recognized Little Rock, Memphis, Fort Smith,

and probably Texarkana, as jobbing centers, and the tariffs were so arranged that the traffic would be distributed out of those centers, rather than passing from the one into the territory of the other?

A. I am not qualified to testify as to what the tariffs were at that time. While I was General Manager of the road, we had
1514 the head of the Traffic Department, who handled that part of the business, and I did not come directly in contact with the details of it.

Q. You know as a general proposition—take Little Rock and Fort Smith—that the tariffs were so arranged that Little Rock could reach one-half the way to Fort Smith, and——

A. I understood such arrangements were in force, but I am not familiar with the details.

Q. Is not that general railroad usage—to arrange zones by which the traffic is distributed out of those commercial centers, according to the zone belonging to each?

Mr. MOORE: I object to that. I don't think it is competent to prove a specific fact by general usage.

The MASTER: I suppose he intends to apply that to local conditions in Arkansas.

Mr. HILL: Certainly, and probably to Memphis——

Mr. MOORE: Mr. Doddridge has just stated that he was not familiar with the traffic arrangements at that time, and he is now asked how traffics are generally arranged in the railroad business. That does not prove how it was arranged in Arkansas nine years ago.

Mr. HILL: I was getting up to that, but I will change the question and make it applicable to Arkansas directly; that will be my next question.

The MASTER: I will let him answer the question.

A. I don't believe I can qualify on such a question as that. I——

1515 Mr. HILL:

Q. Take it this way: Russellville is half way between Little Rock and Fort Smith, approximately, is it not? Don't you know that the jobbing trade out of each of those cities is largely confined to the territory reaching to Russellville, each way?

A. I think you are right.

Q. How could there be a difference of length of haul on traffics that move up and down the road, between Little Rock and Fort Smith?

A. Well, it makes a difference in the length of haul as between the three points—Memphis, Little Rock and Fort Smith, with reference to its geographical location, Memphis being located on the extreme eastern boundary of the state, and Fort Smith being located on the extreme western boundary of the state; and a great deal of traffic from Memphis, I am satisfied, goes to all points in Arkansas, and I take it that the same condition applies, to a certain extent, to Fort Smith; whereas, Little Rock is located in the center of the state, and while a certain part of the Little Rock traffic might go to

all points in the state, the proportional distances would be changed on that account.

For instance: I happen to know that you are a manufacturing town at Fort Smith, in respect to furniture, and I believe that the furniture trade covers the entire state. There might be a reason for that; possibly the same articles could not be, or rather, are not produced at one of the other points.

1516 Q. Don't you know that there is one of the biggest brick plants in the United States, in Little Rock, that is sending brick all over Arkansas, and is one of the heaviest tonnages out of that place?

A. Then the relative distance from Little Rock, as a radial point in Arkansas, would be shorter than the distance to all points in Arkansas from Fort Smith or from Memphis, and vice versa, on account of the difference in the geographical position.

Q. Those things apply to all those towns alike; it is merely a little difference in detail, one from another. Don't you know the conditions down there are substantially the same, Mr. Doddridge?

A. Well, I would suggest to settle this question with absolute accuracy, that Mr. Roth, or one of these gentlemen that have these statistics under their hands, state the facts for you.

Mr. HILL (to Mr. Roth):

Q. Mr. Roth, have you any statistics on the traffic out of Memphis, Little Rock and Fort Smith?

Mr. ROTH:

A. I have some statistics out of Fort Smith.

The MASTER: Mr. Doddridge, you are not obliged to answer all those questions. If you don't know, just say you don't know. Not any of us can know everything.

The WITNESS: Well, I am ready to say that I don't know as to these details.

1517 The MASTER: Of course, you are ready to answer any question that you know, but we don't all know everything, as I said.

Mr. HILL:

Q. Then you say you don't know?

A. I don't know.

Q. What did you mean this morning, by stating that the average length of haul out of Memphis and Fort Smith, was greater than out of Little Rock?

A. I know the geographical location.

Q. You base that on geography then, and not on actual facts?

A. Yes, I based it on geography and not on actual conditions.

Q. Well, we will not quarrel with you about the geography of the situation.

Mr. MOORE: Mr. Roth, did you say that you had the average length of haul from Memphis or Fort Smith?

Mr. ROTH: Not from Memphis. I have from Fort Smith to Arkansas points.

Mr. MOORE:

Q. State what is was, for the period you have there.

Mr. ROTH:

A. For the year 1907 it was 183.65 miles.

Mr. HILL:

Q. On Arkansas traffic?

Mr. ROTH: Yes, on Arkansas traffic—on the Fort Smith branch to Arkansas points.

Mr. HILL:

Q. What was the volume of the business?

Mr. ROTH:

A. The volume of the business was 146,000 tons.

1518 Mr. HILL (to Mr. Roth):

Q. Was that for the whole year?

Mr. ROTH:

A. Yes.

Q. The entire traffic out of Fort Smith into Arkansas?

Mr. ROTH:

A. From that branch, not only Fort Smith.

Q. From what branch?

Mr. ROTH:

A. The Greenwood branch; all freight that moves through Cherokee Junction to Arkansas points.

Q. That would include all your coal mines at Jenny Lind?

Mr. ROTH:

A. Certainly.

Q. The total tonnage you have there is of the entire traffic moving over that, for that entire year?

Mr. ROTH:

A. For that entire year.

Q. Have you the traffic moving out of Memphis and out of Little Rock?

Mr. ROTH:

A. No sir, I have not. I merely have this because I thought a question might arise as to whether that traffic was interstate or intrastate.

Q. All of that tonnage has gone into the interstate statistics here

and lengthens out the interstate haul on account of being in there, doesn't it?

Mr. ROTH:

A. The interstate haul?
Q. Yes.

Mr. ROTH:

A. No, I think it is shortened. As the average interstate haul is more than 183 miles, the effect of that 183 would naturally be to shorten it.

Q. A great deal of the interstate haul is very much less
1519 than that, is it not?

Mr. ROTH:

A. Yes, there is a great deal of this interstate business that is very much less.

Q. I wish you would get up, in the same way, the tonnage out of Little Rock and Memphis; will you?

Mr. ROTH:

A. I am afraid that would be a very hard piece of work, sir, as far as Little Rock is concerned.

Mr. HILL: Mr. Moore, I would like him to do that. He has put in evidence part of the figures, and if he can get that up I think it is only fair for him to do so.

Mr. MOORE: I will see what time it takes; of course, if it takes up too much time——

Mr. HILL: I don't want to impose any unusual burden, but if he can get it up readily, as to Little Rock and Memphis; he worked that up——

Mr. ROTH: This was worked up concurrently with our statistics.

Mr. HILL: I cannot see any value to a comparative statement when you are comparing three towns and get statistics for one.

Mr. MOORE: He happened to have this on account of the conditions he spoke of just now. I will get Mr. Roth to do it if he can do it within a reasonable time, but if not, you must get your own men to do it.

The MASTER (to Mr. Hill): Do you want him to report later?

Mr. HILL: Yes; I am satisfied that with Mr. Roth's in-
1520 genuity, assisted by Mr. Johnson and these other men, they can work that up readily.

Mr. MOORE: There is no question about their ability to do it.

Mr. HILL: I mean readily; their ready ability to do it.

Mr. MOORE: The question is the time and labor. You have just been told that he worked this thing up concurrently with other statistics. We are perfectly willing to give you the information. The only question about Mr. Roth's doing it is the question of the time and labor that would be necessary.

Mr. HILL: Well, you look into it, Mr. Moore.

Mr. MOORE: I want you to understand now that the books are open for you to get the information.

Mr. HILL: I understand that.

Mr. MOORE (to Mr. Roth):

Q. Mr. Roth, can't you state now whether you can do it within such a time as would be reasonable; don't you know as much about it now as you will any other time?

Mr. ROTH:

A. No sir, I would like to have time to look into that.

Mr. HILL (to the witness):

Q. Mr. Doddridge, you think the local trains in Arkansas travel faster than your through trains, or as fast?

A. When you speak of the road speed, yes.

Q. Have you been down there recently, Mr. Doddridge?

A. No sir.

Q. If you take a trip down there with me, I believe you
1521 will revise your testimony.

A. It may be that there are some extraordinarily fast through trains there, that did not obtain years ago; but 45 or 50 miles an hour, or even 60, is not an unusual speed for a local passenger train to make between stations.

Q. Talking about picking up this passenger—at Jacksonville, I believe you said, that is a negligible quantity: of course you understand that I was using Jacksonville merely to illustrate one point in the proposition, don't you?

A. Yes.

Q. You don't think that the feeding of the through trains by the stoppage of the local trains in the state, is a negligible quantity, do you? I am speaking of passengers now.

A. Well, it depends upon how you would view it, as it must be relatively a small quantity as compared with the general local business handled by those trains; it is an incident of the conducting of transportation on railroads doing a large passenger business, as our Iron Mountain is shown to be doing in Arkansas; for a certain percentage of people who patronize the local trains, by changing——

Q. Take Mr. McPherson's statement: he said the through trains stopped every thirty-five miles on the main line, and on the Fort Smith branch they stopped every seventeen miles; that the local stopped every five miles. Now, those are the average stops. There would be thirty-five miles on the main line without any break
1522 in the through train. There would be a great deal of local passenger traffic picked up in that thirty-five miles, by the locals would there not?

A. I should think there would be considerable, on the main line.

Q. Well, on Little Rock and Fort Smith, where the stops are five miles as against seventeen, there would be considerable, wouldn't there?

A. I would not think it would be as great on that sort of a road; there would be some, of course.

Q. You stated that in the Cotton Belt test it showed on local trains as compared with through trains, that they were loaded about one-

half less-than-carload cars and all cars carried in local trains, as compared with through trains, there is quite a material difference: I believe that is your statement, as I wrote it down.

Is it not a fact that the less than carload movement is only about four per cent on your tonnage on the Iron Mountain—I don't know what it is on the Cotton Belt?

A. I don't remember, without referring to the statistics.

Q. (To Mr. Johnson:) Q. Is not that right, Mr. Johnson? About four per cent, the less-than-carload?

Mr. JOHNSON:

A. About four per cent of the total movement.

Mr. HILL (to Mr. Kimbell):

Q. What is the percentage of the less-than-carload on the Cotton Belt, Mr. Kimbell?

1523 Mr. KIMBELL:

A. On the System it is about eleven per cent.

Mr. HILL:

Q. I am speaking about Arkansas; do you remember?

Mr. KIMBELL:

A. I haven't that in Arkansas. I guess you have a corresponding statement there.

Mr. HILL (to the witness):

Q. Mr. Doddridge, I will ask you, from your experience what would you say was the average loading of the less-than-carload package freight car?

A. The load of less-than-carload freight varies greatly——

Q. I am talking about Arkansas.

A. I have no statistics as to Arkansas, but in my judgment, it probably would not run over three or four tons.

Q. What average loading is maintained in such a car, in a day's run, over a local freight train?

A. Well, in a local freight train that is peddling it out; it simply decreases until it is resolved to nothing.

Q. Don't it pick up, too?

A. No, not cars loaded at a jobbing point that is distributing merchandise—don't pick up very much, unless it is in the cotton season——

Q. Produce would be picked up, wouldn't it?

A. Not usually; the tonnage is not replaced; it is peddled out of the car in distribution.

Q. I am calling your attention to the fact that there would be two sides to it, some would be peddled out and some
1524 would be peddled in. I want your judgment as to what is the average loading throughout the run of a division.

A. They don't pick up very much, unless it would be, as I started

to say in answer to your previous question, during the cotton season—they might load those cars with cotton.

There is a certain kind of produce, of course, loaded along the road, but in respect to the tonnage, it is not a very large quantity.

Q. I understand that, but I want to get the benefit of your judgment. You have given us your judgment on this other side of the question and now I want your judgment on that.

A. I don't know what the return tonnage would amount to; it would depend entirely on circumstances and conditions, and the part of the road you were dealing with.

Q. You don't feel capable of forming an opinion on it, is that it?

A. Not to give you a definite answer, no sir.

Q. Then do you attach any importance to the statement that you have made here about the loading, in your Cotton Belt test, being about one-half, if you cannot form any definite answer as to how that is kept up?

A. About half the loaded?

Q. That is what you stated, as I understood you.

A. Well, I will find the test.

Q. I am speaking of what you said this morning, Mr.
1525 Doddridge.

Mr. HILL: If he wants to look that up, he can do so. I see it is our adjourning time.

Mr. MOORE: He said nothing about that.

Mr. HILL: I put it down here.

He has given that side of it, and I want him to give an average on it, and if he cannot do it, I want to know what value this has.

The MASTER (to the witness): If you are not ready to answer that now, we will take a recess until two o'clock.

1526 Recross-examination of W. B. DODDRIDGE, continued.

By Mr. HILL:

Q. I wish you would look at the second item on Statement 5 of Exhibit 3, in the St. Louis, Iron Mountain & Southern Railway Company's case and read that into the record.

A. "Maintenance of Equipment: This account includes all cost of repairs, renewals and depreciation of cars and locomotives, also shop machinery and tools. The cost of repairs, renewals and depreciation of equipment being of a general nature and not applicable to any particular state is divided between all states upon the basis of the mileage of each class of service in each state. The cost of repairs to shop machinery and tools, stationery and printing and supervision is divided between States upon the basis of the total engine mileage over the territory under the jurisdiction of each shop superintendent. The cost of repairs to freight and passenger cars are compiled separately and all expense of a common nature is divided between freight and passenger upon the basis of the number of train miles in each class of service."

Q. I will call your attention to the fact that Mr. Johnson testified,

and I presume you heard it, that the company pools the cost
1527 of car and locomotive repairs for the entire Missouri Pacific System, and distributes this charge among the various lines, including the Iron Mountain, upon the basis of the use made of the equipment. That is, the car and locomotive miles: isn't that correct?

Ask Mr. Johnson, if you are not sure about it.

Mr. JOHNSON: It is correct.

A. Yes, sir.

Q. The amount charged to the Iron Mountain in Arkansas in statement 4, included in Exhibit 3: this expense was arrived at on a car mile and locomotive mile basis and represents Arkansas' proportion of the pool charge for repairs and maintenance upon such basis: isn't that a fact?

A. I presume it is, according to this statement.

Q. Ask Mr. Johnson, to be certain about it.

Mr. JOHNSON: The repair items for repairs to cars and locomotives, were arrived at on that basis.

Q. Did you know that yesterday when I was inquiring for some proper basis to divide the expenses between local and through trains? That is, the equipment of local and through trains?

A. I have not made any investigation of these accounts, and, therefore, I am not qualified to make any exact statement with reference to them.

Q. I am asking you if you knew this basis of division on yesterday, when I was questioning you about a proper basis for the
1528 division of maintenance of equipment between the local and the through trains?

A. I knew there was a basis.

Q. I ask you if you knew this was the basis?

A. I had never given this matter any consideration whatever.

Q. Then you did not know yesterday, when I was inquiring for a basis upon that, that the company has used this basis (indicating exhibit), did you?

A. No, sir, I did not know it.

Q. Now, with this knowledge brought to your attention, what do you say about this division?

A. As to the appropriateness of this division of these expenses?

Q. Yes.

A. I have not given the matter any consideration and I do not feel qualified to commit myself to an opinion on the subject without doing that.

Redirect examination.

By Mr. MOORE:

Q. Mr. Doddridge, do the through trains afford any nourishment to the local trains, as "feeders."

A. Yes, sir.

Q. In what way do the through passenger trains operate as feeders to the local trains?

A. In exactly the reverse way in which the local train feeds the through train.

Q. Do the through freight trains operate as feeders to the local freight trains, in any sense?

1529 A. Yes, sir.

Q. In what way?

A. The through trains carry a great deal of interstate freight in the way of merchandise and manufactured articles, from outside of the state to the various jobbing points in Arkansas. These goods after their arrival at these points are resold and redistributed throughout the state.

There may be many other ways in which this same effect is produced, that I do not think of at the moment.

Q. Do local peddling trains usually pick up very much freight en route from the outer points to the centers over their haul?

What I mean is this: a train will start out say from Little Rock to a point 25 or 30 or 40 miles distant from there with a load of say less than carload freight for distribution along that route.

Do they, as a rule, pick up much freight in going from the point at which they started to their destination?

A. I take it you mean to replace the tonnage with which the car started?

Q. Yes, sir, that is what I mean.

A. I would say that as a general proposition its tonnage is not replaced in a car, unless it happens to be during a crop moving season like cotton, where the tonnage may be replaced, if it were going in that direction. It is not replaced with the same character of

1530 tonnage that the car started with.

Q. Does cotton move usually toward or from the centers of business?

A. Cotton moves toward the various compress points.

Q. Are those compress points located in the centers of business, like Little Rock?

A. I was going to say they are scattered throughout the state and away from the centers, mainly. There are compress points at the centers, of course, but they are not all located there.

Q. Take the smaller, local centers, small districts, what is the location of the compresses in regard to those points? What is the movement of cotton in its original baled condition, with reference to compress points? Is it for the purpose of distribution or concentration?

A. It is for the purpose of concentration.

Q. If a local train is hauling freight away from those local centers, out into the country, does it pick up any cotton in its outward journey? That is, is it likely to do that under those conditions?

A. It is not likely to do so, no, sir.

Q. I ask you to state what the general rule is in regard to the matter of that class of trains picking up freight to replace the tonnage as it is unloaded on their outward journey?

A. The local train crew——

1531 Q. I am not talking about the crew. Answer the question as to the actual facts of whether they pick up much or little on their outward trips from the centers?

A. They pick up relatively a small amount of freight on the outward trips.

Recross-examination.

By Mr. HILL:

Q. I forgot to ask you to make an estimate of the average loading of the less than carload, the matter which we were discussing before we took a recess today. You have explained your reason: now, give us your best judgment.

A. I find in looking over these statistics that the average loading less than carload is not stated therein. That is what I was to look at during the noon hour.

But the tare weight of the equipment is stated, and it shows about double the tare weight of equipment; so that would indicate that the car would be about half loaded.

Q. Do you think there is any corresponding relation between them?

A. Yes, sir, there is between the weight of the equipment and the load. But what it is, with exactness, I cannot state because it was not stated in those statistics.

Q. Your statement this morning about the average loading if you had no statistics to back it, was simply your judgment?

A. Based on this tare weight of the car.

1532 I was under the impression that the actual tonnage was in the statement.

Q. And you found you were mistaken?

A. Yes, sir, I found I was mistaken.

Q. What has the tare weight to do with the loading?

A. The amount of car required to produce a certain number of ton miles, relatively, has everything to do with it.

Q. Suppose it was loaded with feathers in one case and iron in the other?

A. If it were the same number of tons it would weigh the same.

Q. It would not be the same number of tons, if one were loaded with feathers and the other with iron, would it?

A. No, sir, probably not.

Q. That would be a question of space and not a question of weight?

A. Yes, sir. But Mr. McPherson in his testimony stated that five tons was the average less than carload loading.

Mr. MOORE: No, he did not state it was the average. He stated it was the maximum.

Mr. HILL:

Q. What we are trying to do, to make a long story short, is to get your judgment on the average loading of less than carload freight.

A. The average loading of less than carload freight, according to

my judgment, in Arkansas would not be probably over three
1533 tons.

Q. You stated a few minutes ago that the through trains feed the local: they feed it with interstate traffic, too, don't they?

A. They feed it with interstate traffic which becomes intrastate after it is rehandled.

Q. All of it?

A. No, sir, I do not say all of it.

Q. You mean by that, that it is hauled into Little Rock, for instance, from St. Louis or some other large point, and then sold, and it is reshipped from Little Rock as a new sale?

A. It is then intrastate freight.

Q. That is not the proposition we were talking about this morning, but of one train feeding another directly.

A. Well, there may be interstate freight that is distributed that is still interstate freight when it reaches its destination.

Q. I was talking about a continuous shipment, Mr. Doddridge; and we discussed that between us, you and I. And now you are shipping it into Little Rock and it may stay there for years before it is shipped out?

A. I hardly think it would stay that long.

Q. It might?

A. Some of it might.

Q. That is entirely a different proposition from the
1534 one I was discussing this morning, isn't it?

A. No, sir, I think not. That is feeding the local traffic, I think.

Q. If that is your idea we will rest with it there.

1535 F. P. JOHNSON, recalled, testified as follows:

Recross examination.

By Mr. HILL:

Q. Mr. Johnson, have you got the data I asked for the other day on the Pacific Express Company stock?

A. The Pacific Express Company stock is in the name of the Missouri Pacific Railway. The St. Louis, Iron Mountain & Southern Railway has no Pacific Express Company stock at all. Any dividends that might accrue from that stock are credited to the Missouri Pacific Railway.

Q. Have you the contract we had here the other day?

A. Yes, sir.

Q. Let me look at it a moment, please. (Counsel here examines contract).

Have you the contract with the St. Louis, Iron Mountain & Southern and Pacific Express Company?

A. No, sir, that is the only contract there is.

Q. This is one you furnished me, which appeared to be between the Pacific Express Company and the Missouri Pacific Railway Com-

pany is the only contract under which express is transported over the St. Louis, Iron Mountain & Southern Railway?

A. Or any other line interested with the Missouri Pacific Railway.

Q. Why is not this stock dividend apportioned over the St. Louis, Iron Mountain & Southern as well as the Missouri Pacific

1536 Railway?

A. I have not the slightest idea. That was a transaction in 1886.

Q. Does the Missouri Pacific Railway still own it?

A. The stock?

Q. Yes.

A. Yes, sir.

Q. And is receiving dividends on it?

A. Yes, sir.

Q. How much?

A. 6%.

Q. On the $2,400,000?

A. Yes, sir, $144,000.00. That is, that is the dividend they received in 1908.

Q. 1907 includes our period.

A. That includes that period and I feel satisfied there was that same dividend that same year.

Q. There is a provision that the capital stock of the Pacific Express Company shall not be increased over $6,000,000: do you know what the capital stock is?

A. No, sir.

Q. You do not know what proportion this $2,400,000.00 is to the whole stock of the Pacific Express Company?

A. Today, you mean?

Q. Yes.

A. No, sir.

1537 Q. Say, in 1907?

A. That is, I do not know what the capital stock of the Pacific Express Company was in 1907.

Q. That would go to just the question of the proportion of the ownership of the Missouri Pacific Railway; but you know that the Missouri Pacific Railway Company in 1907 owned $2,400,000 and received six per cent dividend thereon?

A. Yes, sir.

Q. And that was not distributed over the St. Louis, Iron Mountain & Southern Railway?

A. That dividend?

Q. Yes.

A. No, sir, and on no other line except the Missouri Pacific.

Q. Does this contract apply to any other line except the Missouri Pacific?

A. I understand it operates upon any line we may acquire.

Q. Does it state that anywhere in this contract?

A. I do not know whether the contract so states or not.

Q. Will you make copies of this contract and attach it to your testimony?

A. Yes, sir.

Paper referred to is marked "F. P. Johnson Exhibit 36."
Said exhibit is in the words and figures following, to-wit:

For Exhibit 36 see Volume 8, page 5370.

1538 Q. Have you looked into that Pullman equipment sale?
A. No, sir, I understood that was something you would look into later on.
Q. I stated I was not in any hurry about it, but before we meet again I hope you and Mr. Hamilton together can look into it.
Have you that mail contract?
A. No, sir.
Q. If you haven't it ready at this time we will take it up during the next session we have.
Have you the exhibit on the train?
A. Mr. McPherson promised to send that over here this afternoon. The stenographer was working on it at noon.
Q. I want to ask you one more question about the Pacific Express Company contract.
I understand from your statement here, although I believe there is no such statement in the record, that while under its terms it has expired, you are still operating under that contract?
A. We are still operating under that contract.

1539 J. D. WATSON, a witness of lawful age, being produced, sworn and examined on the part of the complainants, testified as follows:

Direct examination.

By Mr. MOORE:

Q. State your name and residence?
A. J. D. Watson. St. Louis, Mo.
Q. Are you connected with the St. Louis, Southwestern Railway Company?
A. I am.
Q. In what capacity?
A. Assistant General Freight Agent, St. Louis.
Q. How long have you been connected with that company?
A. Altogether 14 years.
Q. How long have you been in railroad service?
A. 29 years.
Q. How long have you been assistant general freight agent?
1540 A. Three years last passed.
Q. And what were your duties prior to the time you became assistant general freight agent?
A. Division Freight Agent in the Little Rock freight office. Traveling freight agent, and in various other capacities in connection with railroad service.
Q. Do the duties incident to the position you now occupy, and in-

cident to the positions you occupied prior to the time you became assistant general freight agent, have any connection with the making of rates, and enabled you to familiarize yourself with that subject?

A. At the present time I have direct charge of that branch of the service and have been connected with it more or less for the last twelve years.

Q. Are you familiar with what is known as the Western Classification?

A. I am.

Q. What is the purpose of that classification?

A. It is for the purpose of classifying the various articles that are transported by railroad companies, to determine the class rate to which that particular article is assigned, for the purpose of assessing the freight charges.

Q. In what territory does that classification prevail?

A. In the territory west of the Mississippi River.

Q. Does it apply to all interstate traffic that originates and
1541 terminates in the territory where that classification is operative, without regard to the point at which it may have originated in this ingoing or outgoing freight?

A. So far as the rates of the St. Louis, Southwestern Railway are concerned, yes, sir. There may be some few minor instances in the case of other lines.

Q. I mean, as a rule?

A. As a general proposition, yes, sir.

Q. Does it apply to freight that originates in a territory that may be governed by another classification but which is shipped into a territory governed by the western classification?

A. It would govern in some cases. For instance, a shipment from official classification territory into Arkansas would be governed by the western classification.

Q. And would that be true vice versa?

A. It would be true in the opposite direction.

Q. What is the object in making a classification such as the western classification?

A. With a view of assigning to the shipment transported its proper share of the expense of transportation—or, in other words, have pay for the value of the service it receives.

Q. What are the principal factors in determining the classification of the several articles that are the subject of traffic?

1542 A. The space occupied; that is, the weight per cubic foot of the article is the one unit and the value of the article is another unit. Those together are the basis for the classification.

Q. What considerations are controlling influences in determining the class to which any particular article should be assigned?

Mr. HILL: I don't think that would be competent unless Mr. Watson is a member of the Western Classification Committee.

Mr. MOORE:

Q. Is the St. Louis Southwestern Railway a member of the Western Classification Committee?

A. It is.

Q. Have you any duties to discharge in the way of representing that company in the work of that committee?

A. Mr. J. M. Park, the General Freight Agent of the St. Louis Southwestern Railway, is an active member of the committee and I have attended to several of the meetings in his place.

Q. Have you on different occasions participated in the proceedings of that committee?

A. I have.

Q. Do you know from your experience in the meetings of that committee, what are the leading factors that influence and control in determining the classes to which articles that are embraced in this classification belong?

1543 A. I do.

Q. Will you state what is the governing or controlling influence in determining the classes to which such articles are asisgned?

Mr. HILL: If Mr. Watson confines his evidence to the meetings he attended of that committee, I have no objection. But otherwise I think it is objectionable.

Mr. MOORE:

Q. I will ask, generally, if you know upon what principle classification is made by this committee?

A. The principal factor is the value of the article with a view of arriving at the risk incident to its transportation.

Q. Do you know that that is the principle upon which this classification is made?

A. I know that to be the principle.

Q. I wish you would state what connection, if any, the classification made by this committee has with the rates charged for the transportation of the articles that come under those classifications?

A. It has direct connection in fixing the actual rate, for the reason that the classification determines the class to which the article belongs, and that fixes the rate in connection with the tariff which provides the rate.

Q. What is the ultimate purpose of the classification?

A. To so assign the traffic as to fix the rate on a basis which more nearly represents the cost of transportation.

1544 Q. I want to ask you what is the dominating or controlling influence, ultimately, with reference to the price of transportation, that governs the action of the committee in fixing its classification and practically in fixing rates.

A. The value of the service as governed by the space occupied, and the value of the shipment, which is the factor as to the risk in handling the traffic.

Q. I wish you would state how many classes are provided for in this western classification?

A. Ten, designated 1 to 5 and A to E, both inclusive.

Q. Do all the articles of transportation fall within those classes?

A. No, sir. When the volume of an article will justify it is usu-

ally given a commodity rate; and when the commodity rate is assigned to the article it takes it out of the class, and the commodity rate governs.

Q. What are the principal considerations that induce the application of commodity rates to certain articles of transportation?

A. The commodity rates are usually applied to articles of necessity; and to articles where the volume is great.

For example, lumber and coal move under commodity rates. So also would wire and nails and canned goods.

Q. What is done with the ordinary subjects of traffic, such as merchandise, and that which is used we will say in the ordi-
1545 nary business transactions of the country; the stores and in ordinary use throughout the country, exclusive of lumber, coal and large articles of that character?

A. Those articles are transported and charges assessed as provided by the classes in the western classification; and they govern.

Q. They are assigned to the classes?

A. Yes, sir, they are assigned to the classes.

Q. Mr. Watson, after the articles of commerce have been classified, then I want you to state a little more fully in what way—that is, upon what principle, or what is the basis upon which rates are applied to the various classes: You have already referred to it but I want you to state it a little more fully.

The highest class rate under classification at the present time, is four times the first class. And that goes to class E which is the lowest class. The class E rate is usually 20% of the first class rate.

Q. What class embraces the highest rate?

A. Four times the first class would carry the highest rate.

Q. What do you mean by "four times the first class:" I do not understand that term.

A. The classification for light and bulky articles, articles that require lots of space and are of very light weight, are classified higher than first class; and some of them, for instance, baskets, are
1546 classified much higher than first class. That is on account of the space they occupy and their very small weight.

Q. Why are such articles as you have just mentioned classified higher than first class?

A. For the reason that those articles——

Q. I mean, classified with reference to the rates to be charged, higher than first class?

A. For the reason that those articles requiring more space per cubic foot should pay a higher rate than articles of corresponding value requiring less space.

Q. To what extent does the character and the expense of the service incident to transportation control in the application of the rates to these classes?

A. It controls absolutely. A shipment of baskets, taking four times the first class or three times the first class (according to the kind of basket) and a shipment of bar iron, would be very fair samples. You could load the bar iron to the capacity of the car,

while the baskets would be a maximum of one-fourth the capacity of the car.

Q. I notice Rule 14 of this western classification contains this provison:

"Unless otherwise provided for in the classification, all freight shipped in crates, racks, bales, box- or bundles, will take when shipped in crate- or racks a rate next class higher (greater) than in boxes. And when shipped in bales, boxes or bundles, one class higher (greater) than in crates."

1547 What is the purpose of that provision?

A. The purpose is to provide a higher transportation charge on an article that is not protected than on an article that is well protected.

For instance, a shipment in a box is protected better than a shipment in a crate; and the same shipment in a bag would be less well protected than in a crate; and the measure of protection governs the rate to be applied.

Q. What is the reason for applying higher rates in cases of that kind?

A. The additional risk incurred.

Q. You spoke about commodity rates: please state what the considerations usually are that govern the application of commodity rates to articles?

A. The consideration is usually the volume and the direction of the traffic.

Q. What I want to more particularly ask you is what are the circumstances or conditions under the practice of the committee that cause them to place some class articles in commodities?

A. The Committee does not place articles in commodities. The committee stops when it fixes the classification.

In some cases the classification provides that commodity rates will be applied.

For example, there is no class rate on coal.

Q. By what authority is a departure from classification
1548 for the purpose of adopting commodity rates, made?

A. The volume and commercial conditions, and the risk.

Q. If I understand you correctly then, the duty of the committee ends when it makes its classification and divides the different articles of commerce into the various classes you have mentioned?

A. That is true.

Q. If an article is charged on a commodity rate, it is virtually taken out of the classification?

A. It is taken out of the classification.

Q. What I want to ascertain is, what are the conditions and circumstances that usually cause that to be done?

A. The volume of the traffic and the commercial conditions incident to the marketing of that particular traffic. Each particular traffic being governed by conditions of its own.

Q. Is there any uniformity of rules among railroads governing the cases in which commodity rates shall be applied?

A. Uniformity as to locality only. For example, in a lumber dis-

trict each line would have lumber commodity rates; and in a coal district each line would have coal commodity rates.

Q. By what authority are those rates usually established? What I mean to ask is, is it by the action of one or more railroads whose lines penetrate the territory in which the particular commodities are moved, or is it done by some other authority.

1549 A. It is done by the individual railroads themselves, based upon commercial conditions governing in that territory.

Q. What is the underlying principle upon which commodity rates are fixed? Has that any reference at all in any way to the expense or cost incident to the service? State as fully as possible the rule in regard to that.

A. The commodity rate is fixed in the territory involved from the point of origin to destination, or where the commodity is marketed; and is governed almost entirely by commercial conditions.

If for any reason the carrier feels the rate is from common points too low to be handled with profit, of course, the carrier would not make as low a rate by its rails as would be applicable by some other line.

From local points the rate is fixed with a view of earning a reasonable revenue for the service performed.

Q. State to what extent, if any, the rates on commodities are influenced by the cost of the service that is to be rendered, with reference to the various articles that are rated in that way?

A. You mean by that, the question of hauling a valuable commodity on a higher rate basis——

Q. No. I mean to ask you if commodity rates—are influenced to any extent by the cost incident to the service as to that

1550 particular traffic.

A. It is, in various ways.

Q. Explain that.

A. Minimum weight is one. That is fixed by the difference in the cost of the service.

For example, if the minimum weight has to be low, as in the case of hay, you make a higher rate on account of the low minimum weight. But hay being a necessity and governed by various and sundry considerations other than value, a very low rate is necessary in that case.

Each commodity in itself has its own rules and regulations governing the fixing of a rate.

Q. Are commodity rates fixed with or without regard to the cost incident to the service?

A. In no case without regard to the cost of the service.

Q. Is there any relation between the rates fixed for interstate traffic and for local or state traffic?

A. There is a very close relation as between state and interstate rates, governed by the rates to and from the border points which serve to fix almost exclusively the through rate between the point of origin and the point of destination, through such border points.

Q. To what extent is that relation observed when a general change is to be made in the rates as to one class of business, say state rates?

What effect would it have upon the action of a railroad in
1551 fixing or making changes or readjusting the interstate rates?

A. The interstate rates would be adjusted as early as it is possible after a change in state rates is made. The requirements of the Interstate Commerce Commission and the State Commission being different, it is not effective the same date.

Q. In September, 1908, an injunction was granted your company and other companies against the commission rates, a tariff was prepared and put into effect as to intrastate traffic?

A. Yes, sir.

Q. Was there any change made following that, as to the interstate rates?

A. Yes, sir, as early as possible after those rates were established the interstate rates were changed.

Q. To what extent did the railroads make a change in the interstate rates growing out of the change that had been made in the state rates?

A. Different conditions governing the interstate rates made it necessary to readjust the interstate rates. Probably not to the same extent in percentage but probably to the same extent in cents per hundred pounds.

Q. Do you keep up with the rules and regulations of the Interstate Commerce Commission?

A. I do.

Q. Can you state if that body recognizes the fact of this
1552 relation between state and interstate rates?

A. They do to an extent. They have ruled that a through rate in excess of the combination of the locals would be unreasonable.

Q. Do you know what prima facie effect they give to the combination of the local rates in its application to an interstate shipment, as evidence of reasonableness?

A. I do not recall——

Mr. HILL: I am satisfied that is not competent evidence. I think Mr. Watson has gotten that just reversed. I think the ruling of the Interstate Commerce Commission is better evidence than the opinion of a rate man.

Mr. MOORE: I think, your Honor, that this testimony relates to a general condition affecting railroad traffic and on that account it is competent to prove it in any way. I do not think this is a case where it is necessary to go to the rules and regulations of the Interstate Commerce Commission. It is a condition applicable to a traffic with which all men who are engaged in that traffic would be familiar.

The MASTER:

Q. Did he say he is familiar with that?

Mr. MOORE: Yes, he has already stated that.

The MASTER: I think he may answer that.

Mr. MOORE: Strike out the last question and I will ask it in another form.

955

Q. What I wanted to ask you, Mr. Watson, is: whether if
1553 you know, the Interstate Commerce Commission in determining a question as to the reasonableness of an interstate rate give any effect to or pays any attention to the rates. If so, state in what manner they do it and to what extent the local rates exert an influence in determining the reasonableness of interstate rates?

Mr. HILL: That is objected to. There are many decisions of the Interstate Commerce Commission right along that line. If the witness answers correctly I have no objection but if he does not, it puts upon us the necessity of proving that. This is secondary evidence.

The MASTER: If there is any evidence of a ruling of the Interstate Commerce Commission, or any evidence of the effect of that local rate upon the interstate rate, it would be the best evidence.

Mr. HILL: There are many decisions. They publish their decisions just as the courts publish decisions.

Mr. MOORE: My understanding is that while if there is a litigated case there may be a decision published, in general practice the rules of the Commission is that where a case arises and is disposed of the decision is not published. It is known to the officials connected with this department of railroads what the rule and practice of the Interstate Commerce Commission is.

The MASTER: I do not suppose the Interstate Commerce Commission would feel itself bound in any way by the state rates.
1554 It might be persuasive, temporarily, upon them. But I do not see how this witness can explain that. I think the ruling of the Commission itself, or what it has actually done in that respect, would be the primary evidence.

Mr. MOORE: I will withdraw the question.

Q. Counsel asked this question of Mr. Kimbell, a witness on behalf of the complainant in this case:

"Assume that the entire revenue from freight in the state was $100,000; that the entire freight expense was say $70,000; that the interstate freight revenue was $85,000; that the state freight revenue was $15,000: Then calculate the amount of expense chargeable to the interstate business and the amount of expense chargeable to intrastate business. Then assume that the intrastate rates are increased 33⅓%: then make the same calculation showing what amount is chargeable to intrastate and what amount is chargeable to interstate business.

Assuming that the $70,000 expense account would remain stationary and that the other rate remain stationary, except the change I have indicated."

That is the change in the intrastate rate. This question assumes that there might be a change of 33⅓% in the intrastate rate without any corresponding change in the interstate rate.

I wish you would state your view as to the practicability of such a problem as that, based on the assumption of a change in one class of rate, applicable to one class of business, and not any change in the other.

State if such a condition is possible, in other words.

A. I do not think such a condition is possible. On the contrary, it would be absolutely impossible.

1555 Q. Why is that, Mr. Watson?

A. Because the interstate rates must of necessity change with the state rates.

1556 Mr. MOORE: I want to ask Mr. Watson another question. I want you to state, Mr. Watson, if you know, what are the leading factors that control in fixing commodity rates.

A. The commodity rates are governed by the same conditions that goven the rates generally. In addition to that, the volume of the traffic; the value of the traffic; the direction of the movement, and the length of the haul, are governing factors in fixing the rates on commodities, on rates other than those that are classified, and in taking them out of the classification.

Cross-examination.

By Mr. HILL:

Q. Mr. Watson I believe you used as an illustration this morning baskets and iron as illustrating the difference in cost. Will it cost more to haul a train of baskets than it will cost to haul a train of iron—say the same number of cars?

A. I should not think it would. I could not answer the question definitely without knowledge as to just what the train would consist of.

Q. Say a train load of baskets and a train load of iron, or
1557 take one car of baskets and one car of iron.

A. You could not handle one car of baskets for the same cost that you could handle a car of iron.

Q. Where would the difference be?

A. It would be that the cost of handling the iron would be heavier necessarily; you could not handle as many cars of iron as you could of baskets with the same power.

Q. I am speaking now of a full loaded car. Take for illustration—either take a train load of baskets or a car load of baskets—I presume there would be no difference, but take either factor as an illustration: would there?

A. There would be, yes.

Q. Where would it be?

A. In the tonnage of the car would be the difference. It altogether governs as to what particular line you are on and what particular tonnage the engine could handle.

Q. I am trying to illustrate a light haul over your road.

A. I appreciate what you are trying to get at Judge and I cannot do it for you.

Q. That is what I want to know, whether you can do it; to get at whether you take those factors into consideration in making your rates.

A. We certainly do.

Q. Now if you cannot make that, how could you take it
1558 into consideration?

A. Well, you ask one question and it does not fit with the other. The question that you asked me to answer is whether or not it would cost more to handle a car load of baskets than it would a car load of iron and I say it would.

Q. I am speaking of transportation cost.

A. Yes.

Q. Why?

A. For the reason that the baskets would be more bulky and would require more cars to handle the same tonnage.

Q. Take a single car filled to its utmost capacity of baskets and a single car filled to the utmost capacity of iron: that is what I understood your illustration this morning was, was it not?

A. My illustration had reference to less than car load, or car load fits just as well.

Q. Or take a whole train load, 30 cars, it would be the same whether you take one car or a train.

A. No.

Q. Where would the difference be?

A. You could scarcely load a train to its tonnage capacity with baskets, while you could load it to its tonnage capacity of iron very quickly.

Q. I suppose you are taking the illustration which I believe you used this morning: one car of iron and one car of baskets. That is what you were using this morning.

1559 A. Yes, and if the train was filled out with other traffic and we would add a car load of baskets we could handle it on that train, while the same train could not possibly handle the car load of iron.

Q. That is, if your train was filled to its utmost capacity with other traffic?

A. Yes.

Q. But that is getting away from your illustration. I am trying to take your illustration: here is a train made up of other traffic, and there is added to it a car of baskets or a car of iron: you were using that to illustrate your point. I want to confine to that illustration. Where would be the difference in the cost of service in that train haul, the car of baskets and the car of iron.

A. The difference between the cost of the service is that it costs more to handle the car of baskets than it would to handle the car of iron, on account of the fact that the baskets weigh much less and we have less tonnage in the car, and to carry the same tonnage in baskets it would require more space.

Q. That just comes back to the simple proposition that it requires more space?

A. Certainly.

Q. That is the only difference?

A. That is the difference, yes.

1560 Q. Now here is your train made up of other commodities and there happen to be in that one car load of baskets and one

car load of iron; the only difference at all in the cost to your road of handling that traffic would be the difference in space occupied by the baskets?

A. For the tonnage, yes; cubic measurement of the contents of the car as to the weight.

Q. How would you fix a rate relatively between those two?

A. The rate is fixed by the classification.

Q. How would you get at it; how would you determine what rate you should put on your baskets and what rate you should put on your iron?

A. The rate on the baskets is fixed by the space it occupies, per cubit foot, and the value of the baskets as compared in the case of the iron with the space it occupies and its value.

Q. What proportion would you adjust those rates on?

A. I do not understand what you mean by proportion, Judge?

Q. You have the proposition before you now to fix the rates on baskets and to fix the rates on iron being hauled over your road, how would you and your associates determine, in making these rates—how would you determine how much of a rate to put on baskets and how much of a rate to put on iron?

1561 A. Granting that there was no competitive conditions or other elements——

Q. Leave out the competitive conditions for the present; I will take that up with you a little later.

A. The proportion would be something like seven or eight hundred percent more for baskets than it would be for iron. I cannot figure it out for you in my mind.

Q. How would you get at that seven or eight hundred percent?

A. For the reason that on the baskets the classification would be four times the first class.

Q. How do you get your "4 times first"?

A. That is in the classification.

Mr. MOORE: Is that your expression, "4 times first"?

A. Four times first. You multiply the first class rate by four.

Mr. MOORE: He said fourth.

Mr. HILL:

Q. I want to know why you did that.

A. You want to know why four times first class?

Q. Yes.

A. Because that is the basis we have decided baskets should take.

Q. Why have you decided that?

A. That was decided in fixing the classification on baskets as compared with other commodities.

1562 Q. Why was it done? That is reasoning in a circle. I want to know why it was done.

A. It was done on account of the bulk of the baskets; the space required, and the value of them.

Q. Then you say it would be four times that; are those representative of the actual conditions?

A. If you will let me look at this book (indicating) I will tell you right quickly whether it is.

(Witness examines book).

There are four ratings on baskets. It is according to the manner in which they are packed to take four times first class.

Q. Which were you referring to in your illustration this morning?

A. The baskets not nested, taking four times first class.

Q. Now to make a calculation Mr. Watson, you have to have some figures to calculate from: I want to know how you get at that four times.

A. I could not tell you how we got at the four times first class in the case of baskets without going into the matter pretty thoroughly.

Q. That is what I would like to have you do.

A. I cannot do it here because I have not the information here; I do not know how much space was required, or what their

1563 value or weight per cubit foot would be.

Q. Have you not helped to make these rates?

A. Oh yes, for a good many years; something like 15 now.

Q. When you make those rates don't you know what you are basing it on?

A. You do not require us to keep those things in our mind, Judge; they are a matter of record.

Q. Where do you keep them?

A. They are kept in the classification at present and that is what this book is printed for.

Q. What sort of records have you to show the difference in the cost between the baskets and the iron?

A. The record at the time the rate was established is kept by the Western Classification Committee.

Q. What would that record show?

A. That record would show the weight per cubic foot, the value per cubic foot.

Q. Would it show the cost of the service?

A. That would show the cost of the service in itself; the value per cubit foot would represent the risk of carriage, transportation, and the weight per cubic foot would represent the space required.

Q. Would the cost of service on your road be the same as it would be on the Denver and Rio Grande?

1564 A. As a general proposition possibly, yes.

Mr. MOORE: You mean relatively, don't you Judge?

Mr. HILL: No I mean actually.

A. As a general proposition probably yes. I cannot answer the question without knowing something about the Denver & Rio Grande.

Q. Well, take the Santa Fe in New Mexico and Arizona: would the cost of transportation out there on baskets be the same as the cost of transportation on the Cotton Belt?

A. I imagine the cost of transportation of baskets in that country would be more for the reason that their volume is probably not as

great; but without a definite knowledge of their volume and all the conditions I cannot answer satisfactorily.

Q. Do you know that as a general proposition that the volume of traffic of the Santa Fe in New Mexico would be materially less than the volume of traffic on the Cotton Belt in Arkansas?

A. I imagine so.

Q. And the cost would be different?

A. It would be.

Q. And yet, under your classification it would be the same?

A. No, it would not; the rating would be the same, but the rate of transportation of the traffic may be entirely different.

Mr. MOORE: Do you mean the rate or the rating?

1565 A. No, the rating, not the rate. Rating means classification. Rating four times first class; rate means so many cents per hundred pounds for the distance hauled.

Mr. HILL: I understand the difference.

Q. The rating would be the same?

A. Yes, the rating would be the same.

Q. The rate would be different?

A. It may be different; I could not say what the figures are.

Q. Both of those elements would enter into the revenue produced from your car load of baskets would it not?

A. Certainly, yes sir.

Q. One would be as much a determining factor as the other?

A. Yes.

Q. I noticed in the Commission Tariff that was in force until the roads enjoined it, that the rate for 225 miles (which I believe is about the average interstate haul on your road, or possibly on the Iron Mountain, I do not remember whether yours, or the Iron Mountain), bar iron is at 16 cents, and baskets is at $3.08, which we get at by taking four times first, according to your statement: now I would like you to explain how you got that relation in fixing those rates.

A. I understood you to say that the tariff you are quoting those figures from is the tariff the railroads enjoined?

Q. Yes sir.

1566 A. Therefore we did not fix those rates; they were fixed by the Commission and are inordinately low.

Q. That is correct. I did not get the Railroad Tariff; I probably should have done so, but I overlooked it. You think those are inordinately low: passing aside the question of whether they are low or not, what I am trying to get at is the relation of the one to the other.

Mr. MOORE: Give him the figures you gave a moment ago.

Mr. HILL: Bar iron 16 cents and $3.08 on baskets: you get that $3.08 by taking four times first class for a distance of 225 miles—we took that as the average haul.

It is the relation I am getting at. I want to know if that is a proper relation.

A. That is not a proper relation, no.

Q. What would be the relation?

A. The bar iron rate would be the fourth class rate.

Q. Well, that is what we took——

A. No you took the commodity rate; the bar iron rate would be the fourth class rate. That will give you about the relation that is provided——

Q. That is 42 cents I believe.

A. That relation in that particular tariff is not a regularly constructed one. The figures are not as near as they should be; in other words, fourth class ought to be somewhere in the
1567 neighborhood of 50% of first class, and the figures are not so constructed in that tariff.

Q. Then that tariff is not properly constructed so far as the relations go?

A. That is my understanding.

Q. We will leave aside whether it is too low or not; I am trying to find out the relation.

A. I am trying to give you the information you want as I understand it.

Q. I want you to understand it. What would be the relation, taking my illustration; here is 16 cents as against $3.08 for a 225 mile haul. Give me in rates what should be the relation between those two.

A. I do not believe I can do that without your first telling me what the first class rate is; I will then give it to you.

Q. 77 cents.

Mr. Moore: Let him have the tariff, Judge.

Mr. Hill: Yes, that will be better (handing witness document).

Mr. Moore:

Q. Do you know what tariff that is Mr. Watson?

A. Yes, The Standard Freight Distance Tariff No. 3.

A. (To Mr. Hill:) Upon that basis the rate of the bar iron should be 37½ cents.

Q. As against 16 cents?

A. As against 16 cents.

1568 Q. And what should the rate on baskets be?

A. The figures that are shown.

Q. $3.08?

A. Yes.

Q. Then there is an undue relation in that tariff.

A. Yes, that is one of the complaints against the tariff.

Q. Well, are there other complaints against that tariff along that same line?

A. A great many, yes.

Q. What others?

A. Practically all of the less than car load commodity rates that are shown in the tariff; for example, we have bagging and ties in this tariff at 150% of the car load rate, and a car load rate that is very much less than the fifth class rate.

Q. That is a pretty heavy commodity.

A. I should not think it amounted to very much in less than car load rates.

Q. Well, give me as many illustrations on heavy commodities as you can. I do not care anything about these small movements; I want something that goes to the revenue producing feature.

A. Wire and nails would be one.

Q. Is that a heavy movement?

A. About as heavy as I should judge you would find in
1569 Arkansas.

Q. What is the relation between those?

A. You mean the relation as shown by this tariff? (indicating). You want the rating for that same distance, 225 miles?

Q. Yes, I believe that is the average interstate.

A. The rating shows that 16 cents per hundred pounds. The proper rating for that distance under this tariff as constructed, would be 37½ cents per hundred pounds.

Q. What other heavy commodity do you find? The disproportion in that is a right considerable one.

A. Lime in less than car load lots; the same rate and the same difference.

Q. Is that a heavy movement?

A. No, not in less than car loads.

Q. Just give us the heavy movement Mr. Watson.

A. Sugar, rice and molasses would be one.

Q. What are the figures on those?

A. A distance of 225 miles would be 23; it should be 33½ cents; that is, granting that this scale is correct.

Q. Well, what other heavy movement?

A. Petroleum oil, and the rate here for 225 miles is 22 cents; it should be 37½ cents.

Q. Is that a heavy movement?

A. Reasonably so.

Q. What other heavy movement do you find there?

1570 A. Canned goods is another one—23 seems to have been a pet figure—on 225 miles.

Q. What should it be?

A. 37½ cents.

Q. Those are all less than car loads?

A. Yes sir.

Q. How do you find it on car load movement?

A. Car load movements?

Q. Yes.

A. Well, the conditions are probably worse in that connection. Do you want a comparison as between the class rate and the commodity rate shown?

Q. Which ever way would illustrate your point best. I am trying to find out from you where the disproportion is in that tariff. You state very broadly there are a great many. I want them: that is, for the heavy movement. I do not want to take up a lot of detail with insignificant movements.

A. Take cotton seed, for example; it is shown for 225 miles at 8 cents.

Q. What should it be?

A. The class A rate as shown in this tariff for that distance would be 34 cents. Cotton seed takes Class A. The lowest car load rating in this tariff is class E, which is at 15 cents for 225
1571 miles, and cotton seed in this case is about one half of that rate, which is very low.

Q. Do you know what the rate from Little Rock to Omaha is on that same commodity?

A. On cotton seed?

Q. Yes.

A. A. I could not tell you. I do not think there is a rate, excepting the class rate.

Q. Take Kansas City: do you know what it is to Kansas City?

A. No I would have to refresh my memory to tell you.

Q. I believe it is about 17 cents.

A. Not on cotton seed, no; that is a cotton seed meal rate.

Q. What is the cotton seed rate?

A. I could not tell you; I do not remember what the figures are. The movement is inconsiderable between Little Rock and Kansas City. Therefore I would not be likely to recall the rate.

Q. What other commodity—I am asking about large movements.

A. Moving within the State of Arkansas?

Q. Yes.

A. Well, take your lime movement in the State.

Q. I thought you said that was not so large.

A. Not in less than car loads.

In car loads it is about as large as you would have, outside
1572 of lumber. The ordinary rating on lime, that is, for 225 miles, is 8 cents. The ordinary rating for lime is Class D, the class rate under your tariff is 18 cents.

1573 Q. How much did you say it should be?

A. 18 cents.

Q. How much should it be?

A. 18 cents.

Q. What is it; I did not get that?

A. 8 cents.

Q. That is a rather heavy disproportion, is it not? Well, take lumber: that is one of the heaviest movements in the state, I believe?

A. Yes, it is one of the heaviest movements in the state, and the rates are very low; for 225 miles, here, the rate is 8 cents.

Q. What should it be; I am not speaking of how low it is, I am speaking of the relation?

A. I am trying to give you the relation as between the class rates and commodity rates. I don't understand what you are doing this for, but I am giving you what you ask for.

Q. As long as we understand what we are calling for.

A. The class "D" rate on lumber would be 18 cents; the Class "D" rate is the rate on lumber; in the absence of a commodity rate, that would be 18 cents.

Q. It is also 18 cents from St. Charles, Louisiana, to St. Louis, is it not?

A. Lake Charles, Louisiana, you mean?
Q. Yes.
A. Yes sir.
1574 Q. That is some four or five times as far?
A. Yes, I should say it would be considerably more than that; but different conditions govern that rate.
Q. I infer from your analysis of that, Mr. Watson, that you are not enamored of the Standard Distance Tariff number 3, as a scientifically constructed tariff?
A. I don't believe the Standard Distance Tariff, number 3, was ever represented as a properly constructed tariff. I never heard anybody so represent it.
Q. Do you think it represents the cost of the service?
A. I don't think so, no.
Q. Nor anywhere near it, I would infer from your answer?
A. The result from the application of it would indicate not.
Q. It would not be a very safe measure, then, to use to determine the cost of service in the State of Arkansas?
A. I don't think you can use any tariff to determine the cost of service, Judge. I don't think you could use this one (indicating) to determine your revenue on a proper basis.
Q. Certainly you could not use it to determine the cost of the service, could you?
A. No; the tariff would not represent the cost of service; we have to have some profit, you know.
Q. I understand that; that is where you get your revenue, though, through the tariff?
1575 A. That is the only basis we have.
Q. The only basis you have for getting your revenue: do you think the rates in that tariff bear any reasonable relations to the cost of the service?
A. As a whole?
Q. Yes.

Mr. MOORE: What is that question?

(Question read.)

A. I don't think that I quite understand your question. If you are trying to measure the cost of the service, with the revenue we would derive under the application of this tariff——
Q. That is what I am trying to do.
A. I couldn't possibly do that for you.
Q. Why couldn't you?
A. Because it would be necessary to calculate exactly what revenue we would derive under this tariff, and exactly what it cost to transport or handle the traffic.
Q. Can you do that?
A. Can I do that?
Q. You wouldn't like to undertake it?
A. No sir.
Q. Can it be done by anybody? I concede if anybody could do it you could do it; but I want to know if anybody can do it.

A. Accurately, I don't believe it can be done.

Q. How can you base rates on cost, then?

1576 A. I don't believe that I have testified that we base rates on cost entirely, Judge; I did not say entirely.

Q. You said, as I understood you, that you always bore the cost in mind; that that was one of the controlling factors, or something like that.

A. It is one of the controlling factors in fixing certain commodity rates.

Q. I want to know how you could fix that—bear that in mind as one of the controlling factors, if you cannot get at the cost?

A. You can approximate them.

Q. How do you do that?

A. By the information furnished by the Accounting Department.

Q. What information do they furnish you?

A. The revenue of your tariff and the tonnage that you handle.

Q. Well, I have learned from these gentlemen that testified here before you, that that is not a proper measure.

A. It is not.

Q. You say it is not?

A. It is not.

Q. If it is not, what use can you make of it?

A. You can make this use of it: that it would be improper to assign a rate to any particular portion of your traffic which would yield a less revenue than your general average on certain classes of traffic.

1577 Q. How do you get statistics on any particular traffic, the cost of any particular traffic?

A. We do not get statistics on any particular class of traffic cost; it is not carried in that form.

Q. Then what do you mean by your answer there, as I understood you a while ago, a general average of that particular class of traffic?

A. Well, I have in mind a very large number of commodities: for instance, you make a lower rate for stone than you would for pianos. The risk in handling stone would be inconsiderable; the risk in handling pianos would be very great. The value of stone would be inconsiderable, while the value of pianos would be considerable.

Q. You get your average cost per ton, per mile, for your total ton mile? In total: Also cost per car per mile. Also cost per train per mile.

A. The Accounting Department make up such figures, yes.

Q. Are not those the figures you have before you, that you are referring to?

A. No sir.

Q. What are the figures?

A. The general statement as to the cost of the service, and the revenue derived from the service.

Q. Where are those general figures?

A. I believe they have been filed as exhibits in this case, if my memory is correct.

Q. I have not seen them; how are they expressed, by what unit?

1578 A. By ton mile.

Q. But I understood from these gentlemen who testified before you, that that is of no value, except a comparative value with other roads?

A. That is all the service possible.

Q. What service is it to you, then, in making rates?

A. The only service is to determine as near as we can from that what a minimum rate should be.

Q. How can you determine that from those figures made up in the aggregate?

A. It is not a determinable factor; you cannot get an exact figure.

Q. Can you get an approximate figure?

A. For certain services; for certain districts; under certain conditions.

Q. Different commodities?

A. Yes; taken together with the other factors that go to make up the rate.

Q. You have to take it as a whole?

A. Yes sir.

Q. You have no separate figures on the rates on iron?

A. No sir.

Q. Or on baskets?

A. No sir.

Q. You have the figures on the combination of iron, baskets and everything else?

A. Yes sir.

1579 Q. You have no figures before you at all that would give you any indication of what the rate on baskets should be, have you?

A. As an actual mathematical calculation, no.

Q. You just have to guess what relation baskets would bear to iron?

A. No; you don't guess it.

Q. How do you get at it?

A. Use your experience.

Q. Well, what is the difference?

A. Some people guess better than others.

Q. That is just about all; it is a guess in the last analysis; one may be an experience guess, and one may be no experience; but still it is a guess.

A. No, I cannot agree that it is a guess.

Q. That is probably a difference in the use of the term, more than a real difference between us.

Mr. MOORE: In estimate.

Mr. HILL: Estimate is a good word.

Q. There is no cost accounting system in use on your road, is there?

A. Not that I am advised of, no.

Q. Have you a Commissioner of Statistics?

A. I have never heard of such a gentleman.

Q. Some of the other roads, I understand, have such an officer; have you?

A. No sir.

1580 Q. Do you know of what use a Commissioner of Statistics would be?

A. I couldn't say as to what his duties would be.

Q. He has no accounting figures on cost of transportation?

A. We have not such an officer.

Q. You testified this morning about a change in interstate rates when there was a change in intrastate rates: I think you said that the example propounded to Mr. Kimbell was an impossible one, because there would be a change of interstate rates: do you mean that that change takes place automatically?

A. It cannot take place automatically on account of the difference in the effective dates as fixed by the Arkansas State Commission, and the effective dates as fixed by the Interstate body.

Q. If the railroads did not voluntarily change them, they would not be changed at all, would they?

A. The railroads usually voluntarily establish all of their interstate rates.

Q. Then your explanation really amounts to this: that the railroads should change their rates to bear proper relation to intrastate rates which have been changed?

A. No; the detail of that answer would be from the other end of it, I should say. The intrastate rates were fixed for us by a Commission resulting in a reduction in our interstate rates; as soon

1581 as that controlling factor was removed, the interstate rates would be restored.

Q. My point is this: that they would not be restored automatically?

A. That cannot be on account of the difference in the——

Q. Certainly not, and they would not be restored unless the railroads voluntarily undertook to restore them?

A. The restoration would be made by the railroads of their own volition.

Q. Then when you said that this was an impossible situation, this morning, you simply meant that the railroads would not let this situation remain, did you not?

A. They could not consistently do so.

Q. That is true. It does not mean that they are forced in any way by law or compulsion, other than their own will?

A. Their own will and their desire to earn a reasonable return on the investment, on the property.

Q. Did I understand you to say this morning that the interstate rates were fixed by the intrastate rates?

A. To a large extent, yes.

Q. Was that the condition in Arkansas at the time you got this injunction, that you fixed your interstate rates into Arkansas according to the Standard Distance Tariff, No. 3?

A. They bore a very close relation to the Standard Distance Tariff, No. 3.

Q. What do you mean by a very close relation?

1582 A. The list of commodities are almost identical.

Q. That still is not an answer; I am speaking of rates, not commodities?

A. That is the close relation; we have the Standard Freight Distance Tariff, No. 3; we have a great many of these commodities——

Q. That is going into a discussion of commodities as distinguished from class rates. I am talking about rates proper. Do you mean to say that when the Commission fixes a rate in Arkansas, that the railroads would fix the same interstate rates into Arkansas?

A. I couldn't conceive how the rates would be the same into Arkansas, for the reason that the distance would be greater.

Q. I am assuming the same distance: take a haul out of Memphis into Arkansas; the same distance as a haul in Arkansas; there would be no difference there in the circumstances of that haul, other than that you cross a state line?

A. Yes, and very often that you cross a bridge, for which you pay a certain arbitrary charge. The statement would be all right with that exception.

Q. Taking it from St. Louis, there would be no bridge arbitrary?

A. The rates from St. Louis would not be fixed with that relation; they would be fixed with relation to the rates from Memphis.

Q. I don't quite understand that; I wish you would ex-

1583 plain that a little more fully; the St. Louis rate is fixed by the Memphis rate?

A. The St. Louis rate is fixed with relation to the Memphis rate.

Q. In what relation?

A. In relation to the commercial conditions.

Q. Not according to the cost of service then?

A. Not altogether according to the cost of service, no.

Q. Let us take some concrete illustrations of your point: I have some figures here on rates from St. Louis to Bald Knob—have you the interstate tariff there before you that was in force at the time this injunction was granted?

A. No, I haven't; not to Bald Knob.

Q. Well, I will give you what I have and you can verify it: The rate on apples and vegetables, carload, is 27; less than carload is 43. That is 290 miles, and for an equal haul on the Standard Distance Tariff, it is 20 and 33—interstate tariff, I am giving you now. On the same commodity, at the same time, it was 20 for carload, and 33 for less than carload.

A. Was that apples and vegetables?

Q. Yes.

A. That is right.

Q. Now, take bagging and ties: I understand a distance equal to the distance from St. Louis to Bald Knob, would be 15 for carload, and 22½ for less than carload; is that right? I find in your

1584 interstate it is 19 for the car load and 34 for the less than car load. Canned goods I find in the Standard Distance Tariff was 22 for car load and 27 for less than car load, as against 23 and 43;

wire and nails in this Commission tariff it is 20 for car load and 27 for less than car load; in the interstate it is 18 and 30.

On salt the Commission Tariff is 12 for car load and 22 for less than car load as against 15 and 25.

Sugar and molasses is 15 in the Commission Tariff for car load and 25 for less than car load; in the interstate it is 23 for the car load and 49 for the less than car load.

A. Those figures are not correct on the sugar. The maximum rate on sugar in Arkansas is 13 cents.

Q. Where do you find that?

A. I will have to look to tell you where to find it. It is in here.

Q. We just took that from the distance rate; there may be some modification of it—a distance of 290 miles.

A. Maybe I can find it here for you in a second—item No. 80, Distance Tariff, makes the maximum rate 13 cents.

Q. That should be 13 instead of 15, as against 23 for the same thing in the interstate?

A. Yes.

Q. Now Mr. Watson after looking at those figures can you state that the interstate rates are based on the intrastate rates?

1585 A. As to an actual comparison between state and interstate rates there would be none. We base the interstate rate from a primary market, such as Memphis, and by commercial conditions; the rates would also be fixed from other markets, say St. Louis. Fixing St. Louis you would fix a great many others. For instance, Cincinnati, Chicago and New Orleans.

Q. These are St. Louis rates?

A. I know, I am trying to give you the whole dope while I am at it. Those rates all bear a relation one to the other.

Q. Well, what relation?

A. It would be very difficult for me to tell you offhand exactly the relation between each class and commodity, between each tariff. The tariff would be the best evidence of that.

Q. Well now, speaking generally, what is the relation? I understood you this morning to say that the intrastate rate would fix the interstate rate.

A. It does by fixing the rate from Memphis.

Q. This does not fix a Memphis rate——

A. I know, but the Memphis rate fixes those rates.

Q. Does the Memphis rate fix this Standard Distance rate, 290 miles?

A. No.

Q. Just the other way?

1586 A. Yes, just the opposite way.

Q. Well, let us take some Memphis rate——

A. I want to say in connection to that that the rates from St. Louis to points in Arkansas, according to the figures you have just given, are considerably higher for the same distance than the rates from the same distance in Arkansas. I presume that is what you are trying to bring out.

Q. These figures show that you have taken the figures from St.

Louis to Bald Knob and found the equivalent distance in Arkansas; now take some Memphis illustrations: take apples and vegetables—my figures are somewhat blurred——

Mr. MOORE: To Bald Knob?

Mr. HILL: No, this is to Morrillton. That is 200 miles, or rather it takes a 200 haul rate; I believe it is over or under. I have it here 13 cents for car load and 25 for less than car load.

A. For what?

Q. 200 miles, apples and vegetables.

A. 13 and 25?

Q. Interstate rates 16 and 35.

On bagging and ties the Commission rate is 11 and 16½; the interstate is 15 and 27½.

Canned goods, 16 for car load and 20 for less than car load, as against 18 and 28.

Sugar and molasses 13 and 22 Commission rate, as against 16 and 26.

1587 Now take Memphis to Arkadelphia—that is 210 miles—apples and vegetables in the Commisison tariff 15 and 27, as against 18 and 35.

Bagging and ties 12 and 18, as against 14 and 33.

Salt—I have it blurred here. I wish you would give me that.

A. 9 and 15.

Q. 9 and 15 as against 14 and 21.

Sugar and molasses 13 and 23 as against 20 and 26.

Now what do you say that the relation of those interstate rates bear to the state rates?

A. I should judge those figures are Iron Mountain figures; are based, upon the bridge arbitrary, higher than the rate from West Memphis for the distance.

Q. You think that is the only difference?

A. No there are some other differences, probably by the desire of the Iron Mountain to get more revenue than the Commission scale would give.

Q. Those figures would indicate that that was more an element than the bridge arbitrary; was it not?

A. What was that?

Q. Those figures would indicate that that was more an element than the bridge arbitrary, was it not?

A. Well, you are asking me to say something about rates I am not familiar with; I do not know anything about their construction. I am giving you my view.

1588 Q. Is it not a fact that these rates are not based on the Commission tariff?

A. I should say they were based on the Commission, from what I have seen of them.

Q. Then if they are based on it, I am trying to get at what was the relation of the interstate rate, for the same distance, in the same territory, and the state rate.

A. I cannot answer that question because I do not know.

1589 Q. Why should there be any relation between the two?

A. Why should there be a relation between state and interstate?

Q. For the same distance and territory?

A. The commercial conditions would almost make it necessary.

Q. Then it is commercial conditions and not cost of service that determines these rates?

A. No, the cost of service determines one factor only, and the commercial conditions determine another; you take them all to make up the whole.

Q. If you take the mixture of cost of service and commercial conditions, which is the larger dose, commercial conditions or cost of service?

A. The cost of service is usually the hardest one to overcome; in other words, you don't want to go below the cost of service.

Q. How would you know you were getting below the cost of service on these articles, apples and vegetables?

A. Based upon the estimate you have.

Q. And that is the estimate upon the aggregate, not upon the separate articles?

A. It is an estimate based upon the aggregate, and your knowledge.

Q. Your judgment, rather, as to the separate articles?

A. Yes, that is right.

Q. In exercising your judgment as to how to divide up
1590 the cost of service on the different articles moving under a tariff, you must have some unit to measure by, must you not?

A. As between the various commodities in the same tariff, is that what you mean?

Q. Yes; and you have an aggregate now before you of your total cost of service on the Cotton Belt road, on everything, and you want to fix your tariff now on canned goods and molasses, and the*de* others: when you go to do that you have to have some unit to do that by?

A. No, it is not necessary to have a cost unit.

Q. How do you get at it?

A. The classification is a very fair basis.

Q. How do you get at the classification? That just goes back to the same question.

A. That is exactly the reason why I do not understand your question.

Q. What is it?

A. You are taking me back to where I started——

Q. I am trying to get at your basis of fixing these things.

A. The basis for fixing the rates is the value of the article; the steps it requires to handle it, and then the commercial conditions which may govern its movement, and the distance you handle it.

Q. Are those all?

A. And as to whether or not you can afford to handle it for the rate that may be necessary to handle the traffic.

1591 Q. Now, it is this last element that I am trying to find out from you, how you get at it. I understand your explanation to these others thoroughly, but these last—how you can afford to handle it. I want to know how you (and by that I mean the men who fix the rates, either in the Western Classification or in your own office), how you get at that cost of service?

A. I don't think I said that we got at the cost of service, because we do not get at the cost of service; but we have a general idea of the cost of transportation, and that idea fixes for us the minimum charge that we can afford to handle the traffic for.

Q. You state that that idea fixes the minimum charge: where do you get that idea?

A. We get that idea altogether from the reports—from various sources—compiled by the Accounting Department—the ton-mile basis of the whole aggregate tonnage; that fixes the general question as to the actual cost for all classes of traffic. Then we must take into consideration our experience and knowledge of the cost of handling the different kinds of traffic, and from that deduct the result that we must have to determine whether we shall handle it or shall not handle it; for example, we would haul stone for considerably less than a higher class commodity.

Q. But you have no data at all to show the cost of handling stone?

A. Absolutely none.

1592 Q. Now you have referred to commercial conditions. I wish you would explain just what you mean by that term, as a factor in fixing rates.

A. That term has a general application in fixing all rates on commodities that must move. Probably one of the best explanations is the lumber proposition. A mill is located in a certain district and it must meet competition with another mill handling the same class of lumber in another district. There is a commercial condition the railroad must meet in order to carry the commodity.

Q. In other words, you must foster the industries on your line and protect them in marketing their product?

A. That is one commercial condition.

Q. Then the competition is another commercial condition?

A. That is a competitive condition; that is not altogether a commercial condition.

Q. You are not including that in your term "commercial condition?"

A. Competition between localities would be included in commercial.

Q. But as between railroads it would not.

A. Yes, that is a competitive condition.

Q. Those two factors largely enter into the determination of the rates, where they do enter into them, have a large bearing on the volume of the rate, and when the rate is fixed to meet competition, or to meet these commercial conditions you have referred to, it fixes upon a different basis than the basis of cost.

1593 A. Necessarily.

Q. To illustrate that point in Arkansas: you have a coal rate from Western Arkansas into Little Rock—I believe $1.25—on a haul which probably from the coal zone averages 150 miles.

You have a coal rate into Memphis from Illinois, Kentucky, Tennessee and Alabama of $1.00, which average longer hauls than the one in Arkansas: those are facts are they not?

A. I do not know whether the rate from Memphis to Illinois is $1.00.

Q. It was at one time—while there was a corresponding rate of $1.25 from Western Memphis into Little Rock.

A. My recollection is that that was $1.00 also.

Q. That was the commission rate I am speaking of.

A. The rate established by the railroads since November 2nd was $1.25.

Q. At that time the rate into Memphis was $1.00 was it not?

A. I could not say as to that.

Q. Assume that to be the fact for the purpose of illustrating my point: what dictated that rate of $1.00 into Memphis?

1594 A. We are not a party to that rate, Judge and I cannot give you all of the factors that entered into the making of the rate, but it was undoubtedly commercial conditions.

Q. Roughly, competition with Pittsburg coal, was it not?

A. That probably had a great deal to do with it.

Q. That would illustrate the point you have been making about competitive conditions settling a rate rather than the cost of the service, would it not?

A. To an extent, yes.

Q. Is there not another commercial condition entering into that, and that is to preserve to jobbing centers their natural distributing territories?

A. That is one commercial condition.

Q. That largely determines rates, does it not?

A. It has no general bearing, no. The distance from the jobbing center would fix undoubtedly the territory in which it should distribute. In other words, the same scale from these jobbing centers for the same mileage. would undoubtedly fix the territory in which the jobbing people would operate.

Q. That is true; but how about the rate into those jobbing points from large manufacturing centers, like the steel manufacturing centers of Pittsburg, for instance

A. You mean the rate into the steel manufacturing centers at Pittsburg?

1595 Q. No, from the steel manufacturing centers into the various jobbing points, say Memphis, Little Rock and Fort Smith.

A. The rate from Pittsburg to Memphis is governed by water competition to a great extent.

Q. How about Little Rock?

A. That is governed largely by commercial conditions.

Q. That would be account of Memphis situation, would it not?

A. Yes.

Q. How about Ft. Smith?
A. That is also governed by commercial conditions.
Q. And not the cost of the service?
A. Not altogether, no.
Q. Now is not this another consideration that a traffic man must bear in mind; that is, the reciprocal loading of the cars?
A. He certainly must bear it in mind. The direction of the movement is one of the principal factors in fixing commodity rates where the volume is large.
Q. When he offers inducements to shippers in the way of a favorable rate to get reciprocal loading of the cars that he has to furnish that shipper, he will take the return rate at pretty near anything he can get.
A. No, not pretty near anything he can get, but on a reasonable basis. In other words, the return loading for that equipment enters largely into the cost of the service.
1596 Q. But you would take it back for very much less than you otherwise would do in view of the following movement?
A. Your question is a too general one for me to give you a direct answer.
Q. Well give an explanation of that theory I am inquiring about.
A. The theory is this: that for return loading in a direction where you have a- empty movement you will necessarily make a lower freight rate than you would where you have to haul the cars to the point empty in order to obtain the traffic, all of which enters into the cost of service.
Q. On that return movement you will take whatever the traffic will pay one way, won't you? If you do not you take empty cars back.
A. You said whatever the traffic will bear—we cannot always get what the traffic will bear; there are other conditions involved.
Q. Mr. Watson, the term "what the traffic will bear" has many meaning, has it not?
A. Yes, a very great many.
Q. You have such things as zone rates have you not?
A. Yes, to and from.
Q. It catches them coming and going?
A. Yes.
Q. When you have such zones as we had an explanation of here a while back, of lumber from South Arkansas and *and*
1597 Louisiana to St. Louis, the cost of service is not a controlling factor in fixing that rate is it?
A. Not a controlling factor, no.
Q. It would be a very small factor if any factor at all, would it not?
A. It would enter into it from the standpoint that all of the carriers would not participate in all of the freight.
Q. Well.th ere would be a different cost of service on that traffic: take an illustration we had up here before—the lumber movement from Farrell, Ark., to St. Louis, and the same quantity from Lake Charles, La., to St. Louis. for instance would bear 18

cents; there would be a radical difference in the cost of service of those two cars of lumber would there not?

A. Undoubtedly.

Q. So the cost of the service would not be a factor of any moment in such a rate as that?

A. It depends altogether on how you use the term "cost of service."

Q. How do you use it?

A. You take the shipment from Farrell, Ark., the cost of service to the Iron Mountain for one handling would make the traffic profitable.

Take that same shipment from Alexandria, La. Loaded on another line and by the time they got through paying the connecting line its revenue for the service they would perform, which would be a service that would cost considerably less than the
1598 service they would render from that point, the result would probably be very fair in the aggregate.

Q. Here is an illustration taken from the Iron Mountain tariff: the rate from Lake Charles, La., to St. Louis is 18 cents, out of which the St. Louis, Watkins and Gulf would receive 6 cents per hundred pounds from its haul to Alexandria; the balance of the rate, 12 cents, accruing to the Iron Mountain for its haul from Alexandria to St. Louis; while the local rate from Alexandria to St. Louis is 18 cents, all of which accrues to the Iron Mountain. Thus it is apparent that for exactly the same service performed between Alexandria and St. Louis the Iron Mountain would only get two thirds on a car originating at Lake Charles that it would on one of similar tonnage originating at Alexandria; is not that a fact.

A. Stated just as you have stated it, it is a fact.

Q. Is this not a correct statement of the condition?

A. I cannot say that; I am not familiar with the handling of the business at Alexandria. The chances are that the service rendered by the Iron Mountain would be greater than on the shipment received from the connecting line from Lake Charles.

Q. Why?

A. It would have to place the car for loading. It would have to pick it up and handle it paying the entire expense.

Q. That is the only point you would make against that
1599 division—one terminal expense, is it?

A. Not exactly that; that would not be all, no. One terminal expense as to Alexandria proper would be all, but you take it from the first station this side of Alexandria, there would be other expenses involved, and in that particular case the Iron Mountain would probably have to handle that car empty to Alexandria to get this load of lumber, which would be another expense.

Q. The rough material rate as fixed in Arkansas by the Commission, I believe was an adoption of the railroad rough material rate existing prior to the Commission, was it not?

A. Yes and no; yes to the extent that it adopted about the same basis.

Q. Now is not the theory of that rough material rate this: that a

low rate is fixed on the lumber moving into the planing mill and a higher rate out of the planing mill, for the long haul, and that the combined rates is where the railroad gets its compensation, not on the inbound rate alone?

1600 A. Do you want me to give you the basis of that rate?

Q. I am asking you if that is a correct statement?

A. Partially so; there are other conditions involved.

Q. What are the other conditions?

A. The rate into the mill point is usually fixed on a very low basis. The rate out of the mill point—provided that the through rate from the original point of origin is the same as from the mill point—would yield to the railroad the same revenue as it would have received from this same business had the mill been located at the point of origin instead of the mill point; that is the object of the proposition. In other words, the inbound rate is supposed to represent somewhere near the cost of handling.

Q. The revenue is supposed to come out of the ultimate movement?

A. The revenue is supposed——

Q. The profit, I mean, instead of revenue.

A. Yes sir.

Q. Is supposed to come out of the ultimate movement?

A. Yes, the ultimate movement.

Q. Then if you divide up those two rates and consider them separate movements, they do not bear a proper relation to each other; you would have to take the whole rate in order to get a determination of what was a fair rate on that commodity?

A. That would be all right where the movement was say 25 or 50 miles, but where the movement was greater than that it would not be.

1601 Q. The matter in brief is this: that your profit—or are supposed to get your profit, on the combined movements and not upon either, separately?

A. The profit in handling that particular business is derived from the rate from the mill point to final destination. Of course there is a profit in handling some of the business into the mill point. There is no profit in handling some of the other business into the mill point.

Q. I am not speaking of exceptional conditions; I am trying to get at the general proposition involved in this rough material.

A. That is why I stated the answer as I did, to make it as clear as I could.

Q. But the general proposition, leaving out exceptional conditions, is that it takes the combined rate to determine the profit of the rate upon this commodity?

A. I don't understand just what you are driving at, Judge, but I will try to explain it. The rate on cord wood or logs, or anything of that character, locally, within the state of Arkansas, is fixed on a very low basis as it is, and there is very little difference as between the rough material, and the actual rate on logs or cordwood, and the

difference between the margin of profit on one and the other is so slight that I do not believe it would apear in figures.

Q. Mr. Watson, is it not a fact that in fixing the rough material rate, by the Arkansas Railroad Commission, that it was fixed
1602 at a low rate under the theory or expectation, or assumption, or whatever you might call it, that the railroad would get the outbound movement and thereby compensate themselves for carrying it at a low rate?

A. There was no assumption about it; it was a guarantee. Under the Commission order we were permitted to require a bond to compel the shipper to give to us the outbound traffic.

Q. That would be about forty per cent of the rough material?

A. Not in all cases; some forty, some thirty, some——

Q. The point is this: that a low rate was fixed by the Commission on the assumption that you had a right to charge, on the inbound traffic, at a higher rate?

A. Not on the assumption that we had the right to charge on the inbound whatever the tariff basis and whatever the destination was—there is no requirement as to the destination; just so long as we got the product we could haul it—ten or fifty miles.

Q. I believe you say the railroads re-adjust their interstate rates to meet the intrastate rates; is that a fact?

A. I did not intend to say it that way, if I said so, Judge.

Q. How did you say it?

A. That the state rates base the interstate rates. The intrastate rate is less than the interstate; therefore your term to me is used in the wrong sense; that is what I was trying to clear up.

1603 Q. Suppose the intrastate rates, as fixed by a Commission, under order of court——

A. Then it would base the interstate rates as far as the interstate lines found they could afford to go.

Q. That is the way I understood you this morning; that is the way I put my question. Where this intrastate rate is a fixed quantity, I understood you to say that the interstate rate was adjusted to it.

A. That is all right, but I was just trying to clear up the question with you that the interstate rate is higher than the state, in nearly all cases?

Q. You mean the interstate is higher than the intrastate, for the same length of haul?

A. No, but the interstate movement is greater than the state movement.

Q. The interstate movement is greater?

A. Yes sir.

Q. But the interstate rates are not greater than the intrastate?

A. The interstate rates are greater than the intrastate rates, for the same distance, in very nearly all cases.

Q. Mr. Watson, are you not mistaken, or else you have misunderstood me, in saying that the interstate rates are higher than the intrastate rates, for the same distance?

A. I don't believe you will find any case where they are not. There may be some few isolated cases, but they are very few.

1604 Q. Mr Watson, in Exhibit No. 26, of the Iron Mountain, I find that for the month of October, 1907, that the average revenue per ton, per mile, on interstate freight was 6.901 mills, and on all state business in the state of Arkansas it was 12.826 mills. The first was on the interstate business in the state of Arkansas, including trans-state business.

From those figures you will see that, in round numbers, the state rate was twice as high as the interstate.

A. The state revenue, not the state rate.

Q. This is based on rate per ton, primarily, Mr. Watson.

A. I know it is.

Q. Would there be any difference there between the rate and the revenue?

A. There would not, provided the same amount of tonnage of each particular kind moved in state or interstate traffic and you were comparing the two; there would be absolutely no difference.

Mr. MOORE: Give him also the average length of haul in these rates; let him have all the facts.

Mr. HILL:

Q. Well, your average state haul was 72.21, and the average interstate haul was 218.18.

A. If you will permit me, Judge, you cannot compare the statement that I have made with the statement you have there. I was talking about rates and you are talking about the result of the application of those rates; two different and distinct subjects.

1605 Q. That is your distinction, then, in answer to the question that I inquired of you a while ago?

A. If I understood the question correctly, yes, that is my distinction.

Mr. HILL: That is all.

Mr. MOORE: Now, Judge, before I examine him, I want to take a little time to look over this testimony; I don't suppose I can get it tonight. I want to put Mr. Perkins on. I can put him on now and then take Mr. Watson a little later, unless you prefer I should finish with Mr. Watson first.

Mr. HILL: No, just suit your own pleasure.

1606 C. E. PERKINS, a witness of lawful age being duly produced, sworn and examined on the part of the complainants, testified as follows:

Direct examination.

By Mr. MOORE:

Q. State your name and residence.

A. C. E. Perkins; St. Louis.

Q. Are you connected with the St. Louis, Iron Mountain & Southern Railway?

A. I am.

Q. In what capacity?

A. At the present time I am its General Freight Agent; that, however, dates only from the 10th of this month; prior to that I was Assistant General Freight Agent.

Q. How long have you held that position?

A. Since March, 1909, when I came with the Company.

Q. How long have you been engaged in railroad service?

A. About nineteen years.

Q. Were you engaged in the railroad service before your connection with the Iron Mountain began?

A. Yes sir, I was.

Q. State what your experience has been.

A. I started railroading with the Kansas City, Ft. Scott & Memphis, and was with them approximately five years.

Q. When did that service terminate?

A. That terminated in 1895.

1607 Q. What was the character of your service?

A. During practically all of the time I was with that road I was on the tariff desks making tariffs.

Q. From the time that service terminated, what service were you engaged in?

A. I went with the Kansas City Southern, or what was then the Kansas City, Pittsburgh & Gulf, as chief tariff clerk, having charge of the tariff department.

Q. How long were you with that road?

A. I was with that road for nearly twelve years; I was chief tariff clerk, and then sometime after that, made chief clerk, and subsequent to that, assistant general freight agent.

Q. Did that service continue until you formed your connection with the St. Louis, Iron Mountain & Southern?

A. It did.

Q. What opportunities have your duties given you to familiarize yourself with traffic and freight conditions in the state of Arkansas?

A. My duties for some time past, with the Kansas City Southern, and since coming with the Iron Mountain, have been restricted to the tariff work; the making of rates, particularly; not entirely, of course, in Arkansas, but Arkansas among other states and territories.

Q. State in a general way if you have a knowledge or any familiarity with the rate and traffic conditions in the State of Arkansas, both as to state and interstate traffic.

1608 A. Yes sir, I have. I have been engaged in making rates, principally, of course, interstate rates, into and out of Arkansas, and trans-state rates through the state of Arkansas.

Q. Are you acquainted with the Western Classification?

A. Yes sir.

Q. Are you familiar with the ratings that are established by that Classification?

A. Yes sir, I have had to deal with the Western Classification for the last nineteen years.

Q. State what the object of that classification is.

A. The object of the Classification is to assign to one of ten pri-

mary classes—or, in some instances to what might be called, secondary classes, such as double first, or first and a half—the various articles which are offered to a railroad for transportation.

In other words, with the thousands of different commodities any one of which might be offered to a railroad for transportation, we must have some guide as to the rating which will be applied on that particular article.

Those commodities have been gathered together by the Classification Committee, after years of work and study, and have been assigned to one of the various classes prescribed in the Classification. Upon these general classes or ratings, we base our freight rates.

1609 In other words, the Classification does not give a rate on a commodity, but it simply assigns that commodity to a class upon which we publish rates. The classes run from 1 to 5, and A. to E. The highest class articles is the first class, except in cases where ratings are made double first class; three times first class, or four times first class; they run down to the lowest rated classes at E.

Q. Are there any other fractions except that connected with class 1?

A. No, I think not.

Q. I believe you said the purpose of making those classifications was to adopt a method of rating with reference to commodities. I suppose you mean for transportation service—the commodities that are embodied in those classes: was that what you intended to say?

A. Yes sir.

Q. Why is it necessary to establish that classification?

A. In the first place, it would be impracticable to establish commodity rates on all the various articles which might be offered to a railroad for transportation. In the second place, it would be impracticable for any individual railroad to attempt to issue rates on the various articles without having, practically, a Classification Committee in its own employ.

While there are one or two fixed rules which govern very largely the classifying of commodities, there is a great deal of investigation made as to the particular commodities.

Q. You mean the commodities that are classified?

1610 A. The commodities that are classified. For instance, a shipper who is interested in a particular line of goods very often appears before the Classification Committee—as a matter of fact, there are a great many shippers who do appear before each meeting of the Classification Committee to give that Committee full information as to the commodities which they ship. In other words, they give them an opportunity to make an exhaustive examination into each of the different commodities. Now, a single railroad would not have an opportunity to do that at all, and we would not get the correct results if we attempted to do it singly.

Q. How are those meetings held, with reference to the time; are they stated meetings or called specially whenever it is necessary to investigate?

A. The meetings are held twice a year, in January and July.

There is a meeting now in San Antonio, or will be; it starts tomorrow.

Q. State the practice in regard to hearing complaints and what the purpose of that practice is.

A. The subjects for discussion are docketed, by the request of the shipper. The shipper may have a commodity which is one class, which he feels should properly be given another class. He gives the general information required by the Classification Committee, and in addition to that generally comes before the Classification Committee and argues his case. He is given a hearing and the result is decided on after that hearing.

1611 Q. Is there much or little of that kind of investigation of complaints from shippers?

A. There is a very great deal of it.

Q. State what is the character of the investigation usually made by the Committee on complaints, with reference to its extent and exhaustiveness.

A. Well, there are a great many features that enter into that—for instance, there may be some commodity upon which we have no carload rating at all. A classification gives—in the large majority of cases—one rating for carloads, and another rating for less than carloads. As an example: iron articles, as a general rule, in carloads, are approximately fifth class; less than carloads, fourth class. Now there may be articles upon which we have no carload rating at all, which only provide for less than carload rating, on the assumption, perhaps, that there was no movement in carloads; or perhaps on the assumption that the article should not be given a carload rating. That is usually moved on the same rate, regardless of quantity.

The shipper may feel that his business demands carload rating and he will put in his arguments to show why he thinks so. Those arguments are taken into consideration, of course, and given due weight in determining the action of the Committee.

Q. Do or do not the complaints and investigations referred to, relate to the effect of the rating upon the rates imposed upon different kinds of commodities? What I want to

1612 ascertain is this: do those complaints relate to the reasonableness or unreasonableness of the effect of the rating upon the class of transportation——

Mr. HILL: I would like him to show how many of those meetings he attended before he goes into the detail of their rating.

Mr. MOORE: I think he has already qualified, but I will ask him;

Q. State what your means are—your means of familiarity with that.

A. As a matter of fact, as far as attending the meetings of this Committee is concerned, I never actually attended any of the meetings. But the classification of articles the Western Classification as made up, and the manner of classifying freight is one which all freight men of any experience, are fully familiar with. That is——

Mr. HILL: I object to all of this testimony. I misunderstood the witness. I thought he had been to these meetings.

Mr. MOORE:

Q. I will ask you if you are in fact familiar with the manner in which the classifications are made up by the Committee?

A. I am familiar, yes; I have never actually taken part in those meetings, but I am familiar with what goes on.

Mr. HILL:

Q. These jury trials that you have been telling about, these cases of complaints: do you know anything of those, of your own knowledge?

1613 A. I can't say that I know anything about individual complaints. I know the method pursued by the Committee in handling these matters.

Mr. MOORE:

Q. How did you acquire that information?

A. I know that there are a great many shippers——

Q. Let me ask you if the proceedings of that Committee are printed and reported?

A. They are.

Q. Do you see those proceedings?

A. I do.

Q. And is your knowledge that you acquire, a knowledge based upon the reading of the reports and proceedings of the Committee?

A. The reading of the reports and the information which necessarily comes to me as an office man, you might say, from the parties who actually attend those meetings.

In the case of the Kansas City Southern, Mr. Smythe, who was our General Freight Agent, attended the meetings. I handled the office and the rate department. Those proceedings came back to me, and the machinery which was employed at the meeting was fully explained to me by Mr. Smythe.

Mr. HILL: I submit to the Master that that is——

Mr. MOORE: I am not through asking——

Mr. HILL: All right.

Mr. MOORE:

Q. Are the complaints docketed and the proceedings of the Committee shown by its publication?

A. The complains are docketed, all of them; yes sir.

1614 Q. Do you have the means, then, of ascertaining what the nature of those complaints are, and the extent of them, by the published reports?

A. Yes sir.

Mr. HILL: I would like to see those reports.

Mr. MOORE: I cannot expect to bring them here; it is not a question of primary and secondary evidence.

The MASTER: I think the court can give this evidence its proper weight and consideration when it comes before the court. I will let it go in for that purpose.

Mr. HILL: I thought he said he had attended those meetings, or I would have objected to it earlier. I understood he had attended those meetings.

The MASTER: Really his knowledge of what takes place at those meetings is hearsay; the court can give it what consideration it is entitled to receive.

Mr. HILL: Do you think you should permit hearsay testimony to be given in this record?

Mr. MOORE: I don't think it is hearsay; I will explain why——

The MASTER: I will let it go in.

Mr. MOORE: But I can show you, in a moment, why it is not hearsay—what a man learns in the course of his business.

Q. I will ask you now if the complaints which the Committee have occasion to investigate, any of them relate to the reasonableness of the rates upon commodities that result from the rating made through the classification made by the Committee?

1615 A. They do, yes sir.

Q. Do you know whether that Committee has occasion, in that way, to examine the effect of its ratings upon the rates charged by the railroads which constitute the Committee, on different commodities that are embraced in the classification?

A. They do, yes sir; the classification bears directly upon the rates; while the classification itself does not fix a rate, it fixes the class that the article shall be rated at, and that class fixes the rate—as shown in the tariff—applying in the particular territory involved.

Q. I understand that; the question I ask you is, if the investigation that has to be made by this Committee on complaints, causes them to make an investigation as to the reasonableness of the rates that result from the classification rates—on particular commodities, I mean?

A. They do, yes sir.

Q. Now, Mr. Perkins, what are the elements that enter into and influence the classification made by this Committee?

Mr. HILL: I submit that that is going too far, when he says he has not——

Mr. MOORE:

Q. Do you know as a railroad man, from your experience as a freight and traffic man, what the elements are that enter into and are taken into consideration by the Committee in making its classification?

Mr. HILL: Objected to.

The MASTER:

Q. Do you know it from your own personal knowledge,

1616 or from hearsay, or from learning it in the course of your business?

A. I know it, Judge, from knowledge acquired in the handling of the business. A man could not make a freight rate unless he knew about classification matters. The classification is probably the foundation of our freight rates. A man cannot be a freight man for nine-

teen years without coming pretty nearly knowing how classifications are made.

Mr. MOORE: What he asks is: did you acquire that information in the course of your business as a freight man? That is the question the Judge asked you.

A. Yes sir.

Mr. HILL:

Q. How did you acquire it?

A. I acquired it, Judge, from actual experience, coming up for nineteen years.

Mr. HILL:

Q. I am not questioning your experience; but take the question of complaint about a given rate; you have gone down there and had a trial about that rate: how do you know anything about that except what Mr. Smythe, or your immediate superior, would tell you?

A. In the first place, the result is all printed in a printed proceeding, which is sent to the railroads, and which I see. I know what happens.

Mr. MOORE:

Q. Do you act on those in discharging your duties, fixing rates?

A. That fixes the rating.

Mr. HILL: It is already fixed. You are asking him what
1617 these men do when they try that fellow's case about that rate, when he never was there in his life. I think you are——

Mr. MOORE: I am asking him as a railroad man; he would not be a railroad man if he did not know.

The MASTER:

Q. Is the work of that Committee authenticated, printed and sent out officially to the different railroads that are concerned in it?

A. Yes; we are members of the Western Classification Committee.

The MASTER:

Q. And that is accepted as an official document?

A. It is, yes sir.

Q. By the railroad traffic managers?

A. Yes sir.

The MASTER: There is some doubt. I am pretty liberal. I will let it go in and let the court decide what is right and what is wrong about it.

Mr. MOORE: Read the question.

(Question read as follows:)

Q. Do you know as a railroad man, from your experience as a freight and traffic man, what the elements are that enter into and are taken into consideration by the Committee in making its classification?

The MASTER: I do not see how he can have knowledge of the result

of that Committee—I don't see what knowledge he can have of it if he is sitting in his office in St. Louis——

Mr. HILL: That is my opinion.

1618 The MASTER: I should think that would be wholly incompetent.

Mr. MOORE: He has already stated he does know.

Q. In order to clear that up a little further, Mr. Perkins, just state in your own way what your means of knowledge, in regard to these matters that I asked you about in the last question, are: and what is necessary to qualify you, in the way of knowledge of those matters, to discharge your duties in the capacity you have been working in in connection with the railroads?

The MASTER: Read the question.

(Question read.)

Mr. MOORE: The question that is objected to is, what forms the elements of the basis of classification.

Mr. HILL: By the Committee, I understood you.

Mr. MOORE:

Q. What are the elements that form the basis of classification that is contained in this Western Classification?

Mr. HILL: That is what I object to, in that form as well as the other.

A. My duties would necessarily make it necessary that I be familiar with the fundamental rules of the classifying of freight, inasmuch as the classification of freight is one of the fundamental and underlying principles in all rate making. In other words, a man cannot intelligently make a freight rate unless he understands classification.

1619 He does not necessarily have to go to these meetings where the particular items are taken up, one by one, but he has got to be familiar with the general rules for classifying freight, assigning it to one of the ten classes. As soon as we get those ten classes, we sit down in the office and make those ten classes. Now, if we do not know what those in each class are, what are the controlling factors in putting those articles in these ten classes, we would have a pretty poor chance of successfully making a tariff on freight rates.

Q. Do you take part in making up those ten classes, or are you connected so you have knowledge of it?

Mr. HILL: Well, that is——

Mr. MOORE:

Q. Is your Company, or the Companies for which you worked, constituents of the Committee making classifications?

A. They are, yes sir.

Q. Are you one of the representatives of those Companies, as general freight agent?

A. I was not, in attending these meetings, but in making the rates and using the classifications, and being familiar with the ratings; yes sir.

Mr. HILL: I do not think this witness is competent to speak on those questions. His experience entitles him to speak of the fundamentals and elementals, and all that, but I do question the right of any witness to state what another man is actuated by: to tell what this meeting in San Antonio is actuated by; he can tell what they ought to be actuated by, I have no objection to that.

1620 Mr. MOORE:

Q. I will ask another question to obviate that; from your knowledge of the classification made by the Western Classification Committee can you state the elements that enter into and form the basis of that classification?

Mr. HILL: Objected to; that is just the same thing in another form.

Mr. MOORE: No it is not at all; I will tell you when you get down to that, that I could not if I had every man of the Committee around this table—Judge Hill could exclude every man of them. Judge Hill would say, you are not the Committee, you are only one out of ten or twenty or forty.

Mr. HILL: I think every bit of that ought to be excluded.

(Question read.)

The MASTER: As I look upon the statement, it just goes to the weight to be given to this witness' testimony by the Court, if he has sufficient knowledge about the facts that he undertakes to testify about, to give his testimony full faith and credit, although he may not.

Now under the liberal ruling of the testimony that prevails in this class of cases—Judge Moore thinks it could and Judge Hill thinks it could not, you gentlemen are divided upon that so radically—I think it ought to be admitted as evidence and let the Court give it what weight or what force it should receive. In the form that
1621 the question was last put by Judge Moore it is pretty nearly the same thing; it is not exactly, but the result is pretty near the same as the other.

Mr. MOORE: Say yes or no, whether you can or not.

A. Yes sir, I can.

Q. Now basing your statement upon the classification itself and your knowledge as a freight man of traffic matters, I wish you would state what are the underlying elements that enter into that classification.

Mr. HILL (to the Master): Do you hold that is competent under your ruling? I do not want to keep on objecting, but it does not seem to me to be.

The WITNESS:

A. The weight, bulk and value of the commodity are the underlying principles.

Mr. MOORE:

Q. Do those elements, weight, bulk and value, have any relation to the cost of the service in the transportation of the commodities embraced in the classification?

Mr. HILL: Before he answers that I would like him to qualify on his knowledge of cost of service. He has qualified as to making rates, but not as to cost of service.

The MASTER: I think I will let him answer the question.

A. They do have a direct bearing.

1622 Mr. MOORE:

Q. Please state in what way they do and make your answer as full as you desire, to make yourself clearly understood.

A. The handling of a light and bulky article, as an example, which is classified on the bulk and weight theory, at a higher rated class than some heavy and less bulky article, requires in the first place a greater amount of transportation facilities to handle the same weight of goods.

As an example, if we have a car load of furniture, 12,000 pounds of furniture is about what we get in an ordinary car—in that same car used for handling grain we get 88,000 pounds, if it was wheat. For that reason it would cost—or it would take at least seven cars to handle the same weight of furniture as we would handle in one car of wheat. Our revenue is, of course, derived from the weight which we handle.

Q. Does the nature of the commodity handled enter into any extent as an element in the cost of the service?

A. The nature of the commodity enters very largely into the cost. Some articles are susceptible to breakage and damage. Take as an example a car load of stoves: a car load of stoves is very susceptible to damage. Furniture is susceptible to damage, while a car load of grain is not susceptible to damage, unless it happens to be in a leaky roofed car or something of that sort. But for the ordinary handling, the rough handling you might say, it is not susceptible to the same damage, and therefore not susceptible to claim and has not

1623 the same risk incident to its transportation.

Q. Is that susceptibility to injury and damage an element that enters into or is recognized as an element of transportation by the Railroad Company?

A. Yes.

Q. I will ask you now, for the purpose of illustrating, whether there are not other articles, and a great many of which the same is true: for instance take stone and compare it with glass or with pianos, or with any commodity of more or less fragile character, or of greater value with reference to weight: would it or not?

A. The same comparison could be made against practically all of the commodities that are handled. Of course the difference between some commodities might not be so great as between other commodities, but there is the same comparison to be made between practically all of the business that we handle. Some of the business is more susceptible to breakage and to claims for damage than are others. We have some business that practically we cannot damage.

Q. Are the conditions which you speak of in your last answer such as are obvious and would be known from a knowledge of the different commodities themselves?

1624 A. To a great extent, yes sir.

Q. Now I wish you to state what is the most important element that enters into these different classifications, Mr. Perkins. I mean these classifications which result in ratings and ultimately in the fixing of rates on various commodities.

A. Fundamentally, of course, they are fixed with relation to the cost of the service. In other words, transportation is a commodity which we have for sale; the cost is so much and we have to sell it for so much to make a profit.

Q. What you term "commodity rates" is not covered by the Western Classification is it?

A. No sir, commodity rates are not covered by the classification.

Q. What are commodity rates?

A. Commodity rates are special rates, if you please, which are adjusted to apply on any given commodity without referring the commodity to any one of the ten classes.

Q. What are the conditions that usually bring about a commodity rate; I mean, the application for a commodity rate?

1625 A. It is necessary to provide for commodity ratings on the commodities which form the heaviest movement, as a general proposition; that is, commodities that move in quantities, in order—in some cases—to meet commercial conditions, and in other cases to meet competitive conditions; and in other cases to meet, what we might term rate conditions. There are a great many reasons that can be assigned for the making of commodity rates and not any two of them would necessarily apply to different commodities. In other words, the underlying reason for making a commodity rate in one case would not necessarily apply to another case.

Q. I understand that. Do the railroad companies, in fixing commodity rates, pay regard to, or do they disregard the cost of service?

A. They regard the cost of service always; that is, they attempt to. Commodity rates are often fixed on a commercial condition which necessitates a specified rate. It may be that that condition would require the Iron Mountain, for instance, to establish a rate which we would consider below the cost of operation. In that case we would simply go out of the business and would not attempt to meet that commercial condition. We would, however, meet it as far as we could, so long as it was with profit to ourselves.

Now, the direction of the haul might have a very large bearing upon the rates: in other words, if I, as a freight agent, was called upon to fix a rate on a commodity moving, for instance, from Kansas City to the Gulf—say wheat, for export—if the condi-

1626 tions necessitated what we call a very low rate, I would probably make a rate (southbound) that I would not make if the same business was northbound, for the reason that our predominance of loading is northbound. Our cost of service, southbound, therefore, on that particular wheat, would be less.

Q. Do you in any except very exceptional cases, make a commodity rate regardless of the cost of service, or whether a profit can be made on the movement or not?

A. We try always to make a profit on the business which we handle.

Q. Does the volume of the business enter into and become a consideration in the making of commodity rates?

A. The volume of the business is one of the factors, yes sir.

Q. I want to know whether the rules which prevail in ordinary business concerns—such as sellers of goods and things of that kind, which result in the fixing of different prices on articles sold in large quantities and those sold in smaller quantities, or wholesale and retail, apply also in railroad rating?

A. They do, yes sir; to a very large extent. In other words, we almost uniformly make a lower rate, in cents per hundred pounds, on a carload of a given commodity, than we do on a less than carload shipment, say of 100 or 200 pounds.

Q. How is that with regard to traffic that moves in very large volumes and train loads?

A. Traffic that moves in large volumes are generally given
1827 lower ratings than in the case of commodities with a less movement. That is, I do not mean to be understood as saying that a man can ship a train load at any cheaper rate than he can a carload, but I mean, where there is a volume to move, from a given territory, that volume has a controlling force in the adjustment of the freight rates on that commodity from that territory.

Q. In other words, you mean that you would fix a lower rate on a given commodity, if it moved in very large volume and gave you large employment, than if moved in smaller quantities?

A. Yes sir.

Q. Like a wholesale merchant could sell his goods cheaper than a retail merchant?

A. That is true.

Q. Why is that; what is the reason of that difference?

A. In the first place, the movement of commodities in large quantities gives us a steady movement, a steady employment for our motive power, it gives us trains loaded to the maximum carrying capacity in all cases, and furnishes us tonnage on a wholesale basis. It obviates the necessity of active solicitation, you might say, for the gathering up of business. There are a great many factors which enter into rates of that character.

Q. Does reciprocal movement of tonnage in opposite directions and distances, enter as factors in the fixing of commodity
1828 rates?

A. Both of them do, yes sir; very largely.

Q. Are they regarded by railroad traffic officials as important factors?

A. They are probably the most important factors which we have in fixing our freight rates and in bringing our business to an ideal condition. In other words, the best results can be obtained if we can secure loads for our cars in both directions. The longer the haul, naturally the lower the rate per ton, per mile, we can afford to handle that business for.

Q. The rate on lumber, from points in the States of Arkansas, Louisiana and Texas, has been referred to in the testimony in this case.

I wish you would state, if you know, what conditions produced the traffic arrangements that exist now with regard to the transportation of lumber, and in fixing the rate in the lumber zone that has been referred to: if you know the history of that movement.

A. The fixing of the lumber zone dates back into the 80's, when white pine was the chief lumber used in the middle west. I might say here, Judge, that I will give you the history so far as it relates to the Missouri River, for the reason that I am more familiar with the Missouri River adjustment than any other; but the conditions are substantially the same at the Missouri River as at the Mississippi River and other territories.

1629 In other words, it is a history of the inception and growth of the lumber zone.

When the yellow pine of the south began to compete with the white pine of the north, there was a great deal of competition and rivalry, not only between the sellers, but between the transportation lines. It resulted in complication and rate wars, until finally the white pine interests and the yellow pine interests agreed to leave the matter to arbitration—to fix a relative adjustment of rates to the Missouri River, if you please, from Chicago, which was the distributing market for white pine at that time, and from the State of Missouri, which was the originating and distributing market or producer for the short leaf yellow pine.

As the result of that arbitration, the rate on white pine, from Chicago to Kansas City and all Missouri River points, as far north as Omaha, was fixed at fifteen cents a hundred pounds. The same rate, fifteen cents per hundred pounds, was fixed from southern Missouri, the producing territory at that time being the Grandin District, on what was then the Kansas City, Ft. Scott & Memphis Railroad (now the Frisco), and the Leeper District, on the St. Louis, Iron Mountain and Southern.

In fixing that adjustment the arbitrators fixed a differential to be applied to the lumber originating in southern Arkansas and Louisiana, of seven cents per hundred higher than the adjustment from Missouri, or twenty-two cents per hundred pounds, which rate applied from the mills then in operation in southern Arkansas and Louisiana (they were very few at that time) to Kansas City, Atchi-

1630 son, Leavenworth, St. Joseph, Omaha, and the Missouri River towns between Kansas City and Omaha.

With the growth of Louisiana or the milling interests in Louisiana; the new mills, the new localities, were put on these same bases new routes going down into that territory, opening up new tracts of timber, saw mills going in were put on the same basis as had been fixed in this arbitration.

So that our present zone basis of making lumber rates grew out of this arbitration and that competition as between white pine on the North and yellow pine on the South.

It has been conceded as the territory developed and new mills

went in, by the transportation companies, that in order to permit the new mills to compete with the established mills, that it was necessary to give the same rates to the consuming territory as their neighbors had. It might be that one mill was on a mileage basis, considerably nearer to the point of consumption than the other. The competition, on which the freight rates were made, had grown steadily. The lumber mills were established, investments made, upon the theory that these competitive freight rates would be afforded to them, and from that start the territory has grown until it has arrived at its present proportions.

Q. That is commercial condition?

1631 Yes, that is commercial.

Q. Or was it competitive?

A. Commercial and competitive conditions. Now, as a matter of fact, it would be almost impossible under these conditions, to make freight rates on lumber on any different theory. As an example: the Kansas City Southern has a short line (practically an air line you might say) from Kansas City into the lumber territory of Louisiana. If rates were made on a mileage basis to Kansas City, the mills on the Kansas City Southern with the shortest mileage would naturally have the lowest rates and the mills on the other roads who might not have a short mileage, would be on higher rates and naturally could not compete with the mills that had the shorter rates.

In other words, a mileage theory of making lumber rates to a consuming territory is impracticable.

Q. What is the underlying principle of division as between connecting carriers that engage in the movement of and in transporting lumber from this zone that you speak of?

A. The conditions as between carriers is always a matter of negotiations and agreements. There is this general principle, however, that the originating line gets the largest share of the earnings: that is, according to distance. In other words, it gets more than a mileage pro-rate would yield for the reason that its service is considerable more; for the reason that it originates the business

1632 and must furnish the equipment for handling the business: reasons of that character.

Q. In what respect is the service greater on the originating line than on the intermediate lines, or the terminating lines?

A. I can illustrate that basis, Judge, by giving the actual experience or the actual method of handling lumber on the Kansas City Southern Road, which is one of the largest lumber producers, and I am more familiar with that road than any other.

Q. Very well, state it please, that will illustrate the general situation.

A. Yes, that would illustrate the general situation. In the first place, for lumber originating on any given road, cars must be hauled to the mill—practically all of those cars must be hauled empty to the mill; from the place where they are made empty, of course, the distance varies, but there are very few cars, comparatively speaking, which are made empty at the point where

the saw mill is located. That causes an empty haul. That car must be taken out of the train and switched to the mill. In distributing the cars to the mills special trains must be run to handle or take care of that work, for the reason that the through trains cannot economically handle that class of work, because it—taking out its cars and diminishing its tonnage from time to time.

1633 Now, when the lumber is loaded there is a train run (which in the case of the Kansas City Southern they call a "dodger") which does nothing but switch the mills and pick up that lumber and haul it to a division or concentrating point. In other words, a through train cannot handle that business from the mills for the reason that they would have to start out a train with practically nothing in it and pick up what tonnage there was offered; while this train picks up the cars as it finds them and hauls them into this division or concentrating point. When they are received there they are made up into full train loads. They are then handled to a connection with the next connecting carrier. In case of lumber coming from Kansas City Southern to St. Louis they are delivered to the Iron Mountain at Texarkana.

Q. Now state what service is performed by the Iron Mountain.

A. It picks that car up and takes it off to the transfer where the Southern has placed it, takes it to the yard and puts it into a through train and goes with it.

Q. What does it do when it gets to its destination?

A. If the destination is on its rails it sets it to the lumber yard or point of delivery; if it is not on its rails it simply sets it on

1634 a connection of the connecting carrier.

Q. Is that all the service the Iron Mountain renders?

A. That is practically all, yes sir.

Q. In dividing the amount that is received for that service from the origin to the termination of the movement, the originating line gets the larger proportion because of the yard service rendered by it, does it?

A. The originating line gets the greater proportion according to the service involved; then the connecting carrier.

Q. Do you know if the Iron Mountain has any reciprocal tonnage, uses the cars that lumber is hauled in for reciprocal tonnage, or movement in the opposite direction?

A. Yes, very largely.

Q. State what the facts are in that connection.

A. Our lumber movement is Northbound. The cars that are made empty in the North are used for transportation of grain principally; there are, of course, other commodities—back into the Southern territory, where the lumber originates.

Q. The cars then are utilized in both directions?

A. Yes, as far as possible in both directions our Northbound movement is the heavier of the two. We try to get as much business as we can Southbound to offset it. In other words, the grain Southbound comes very nearly offsetting our Northbound

1635 lumber movement.

Q. I wish you would state if under the arrangement of

rates the freight carriers engaged in that movement of lumber receive a compensation that is remunerative to them.

A. They do, yes sir.

Mr. HILL: How is that?

(Question read.)

Mr. HILL: I would like to ask how he knows it.

Mr. MOORE: Do you know what the average length of haul of lumber on the Iron Mountain is—this is trans-state movement is it not?

A. Yes.

Q. Do you know what the average length of haul on the Iron Mountain road or the Missouri Pacific System is?

A. Do you mean on all the business?

Q. Yes, trans-state business of that character, commodity business.

A. Yes sir, it is about 400 miles.

Q. Do you know what the average revenue per ton per mile is?

A. On all business?

Q. Trans-state.

A. You were speaking of——

Q. Lumber, if you know, and if not, then on what class of business.

1636 A. Lumber is approximately six mills.

Q. I did not know that you knew lumber separate from the other.

I believe you said there was a reciprocal car movement as between lumber and grain: do you know what the average revenue per ton mile on grain is?

A. Grain is a fraction over six mills.

Q. What is the policy of the Missouri Pacific or the Iron Mountain as to its participation in the movement of lumber in such districts as it could not move it and receive a remunerative rate?

A. Business which we believe is not remunerative we do not participate in. In other words, there is business coming from connecting lines which we do not feel would pay us to participate in. Of course I cannot—and I do not suppose anybody else can, sit down and figure out exactly what that figure would be, but from experience I know about what we can afford to handle that business for and there is a good deal of business that is offered to us that we do not handle. That is, I mean, offered to us in this way: that where connecting lines ask us to publish through rates from mills on their line. We figure out what it will pay us and if we do not feel that it will pay us sufficient revenue to warrant our handling it we do not publish the rates. We have done that in a great many cases lately.

1637 Direct examination of C. E. PERKINS continued.

By Mr. MOORE:

Q. Go back for a moment to the Western Classification: does the Classification Committee do more than to make the classification

that is shown on the report of the work of that Committee No. 47, to which your attention has been called; that is to say, does that Committee fix rates?

A. No sir, the classification committee does not fix rates. It simply assigns the articles to the various classes. And that classification applied to the tariffs enables us to fix the rates.

Q. Each railroad fixes the rates that obtain upon its lines, upon the basis of the classification made; that is what you mean, is it?

A. That is correct, yes sir.

Q. Do all the roads apply the same rates to the classification, or is each one governed by its own rules?

1638 A. Each road and each section of the country is governed by its own individual rates. They will use the same classification individually in all territory West of the Mississippi River.

The rates on the Iron Mountain, for instance, will be very different from the rates on a foreign road. Take the road that Judge Hill mentioned y-sterday, the D. & R. G., and the rates would probably be very different.

Q. That grows out of the differences in the conditions affecting each road, growing out of different density of traffic, and various differences in the territory in which the road is constructed and operated.

A. We fix the rates to suit the conditions and to suit the operating conditions on our line; and the D. & R. G. fixes its rates to suit the conditions and the operating conditions, I presume, on its line. Otherwise rates which might prove remunerative in one section would not necessarily be so in another section.

Q. Is this Western Classification used as a basis of distinguishing between the various commodities that are embraced in it for the purpose of rating on all lines of railroad within the territory controlled by the Western Classification?

A. Generally speaking, yes.

Q. How it is with regard to official bodies? For instance, the Arkansas Commission: does it use the Western classification as a basis?

1639 A. Yes sir as a basis. That is the fundamental basis used.

Q. Is there any relation or connection between interstate rates and intrastate rates?

A. There is a very close relation as between interstate rates and intrastate rates; not only is that true with reference to the interstate and intrastate rates in Arkansas, but in a great many of the other States, practically all States, that fix the rates to and from the borders of that State.

The advance in Arkansas intrastate rates which was made prompted a similar advance in our interstate rates. In other words, when the rates locally in the State of Arkansas were raised, from West Memphis or Bridge Junction, which is directly across the river from Memphis, our rates interstate from Memphis into Arkansas were readjusted, were raised. The raising of the Memphis rates practically affects all of our interstate rates to Arkansas. Cairo is advanced differentially over Memphis; St. Louis is advanced

differentially over Memphis. In other words, there is a relation as between the rates which we carry on interstate business from St. Louis to Arkansas as compared with the rates from Memphis.

This is brought about by the fact that Memphis and St. Louis are large distributing centers and we are forced, in order to carry out a parity of rates which will allow the free distribution of
1640 business, to keep those points on a parity; that is, on a relative basis.

That is true also of the business passing through those gateways, coming from beyond.

Now, when we have our St. Louis rates fixed, the rates from practically all parts of the United States from which through rates are carried into Arkansas, are fixed differentially as compared with the St. Louis rates. In other words, the rates from Kansas City bear a certain relation to the rates from St. Louis. The rates from all Kansas points are fixed with relation to the Kansas City rates. The rates from Chicago to Arkansas are fixed on a differential over St. Louis. The rates from Pittsburg, Pa., are fixed on a differential over St. Louis. The rates from what we call the Fox River District, which is Wisconsin, North of Chicago and Milwaukee, are fixed on a differential over St. Louis. The rates from New Orleans to points in Arkansas, Little Rock and South, are in practically all cases the same as St. Louis.

So, when we change the rates from Memphis on account of the changes which are made in the intrastate rates in the State of Arkansas, we practically change the entire rate adjustment affecting interstate rates to and from Arkansas.

This condition is not confined to the State of Arkansas, but it applies to practically all States.

As an example, a short time ago the State rates in Kansas
1641 were changed, being reduced on grain locally within the State of Kansas. The change in those grain rates affected practically every rate on grain which we carried from Kansas to interstate points.

The State adjustment, as an example, fixed the rates from points of origin in Kansas to the Missouri River, to Kansas City, Kansas. The rates to the Mississippi River and to Chicago, and that section, are made practically on a combination of locals through to the Missouri River. That is, by applying what are known as proportional rates from the Missouri River, to the Mississippi River and Chicago. The fixing of those rates fixed the rates to all points East and to Seaboard territory.

In a similar way the rates from Kansas, to Louisiana, Texas and Arkansas were all affected by the change in the rates locally in the State of Kansas.

As a matter of illustration, our rates on grain from Kansas are made from points on and North of the Union Pacific main line, the Kansas City combination to Louisiana and Texas, using of course what we call the proportional rate South of Kansas City. The rates from Kansas South on the Union Pacific main line bear a relation to the combination; in other words, to Louisiana points our rates from

Wichita, if you please, are one cent per hundred pounds less than the Kansas City combination.

So, in changing one of the factors (which is the rate to
1642 Kansas City) you have changed all of your interstate rates.

That is as good an example as I can give you as to just how these changes in State rates do actually change the interstate adjustment.

I could go on and give you a great many examples of that kind but it would be simply a repetition.

Q. Do you know whether or not this relation between interstate and intrastate rates is recognized by the Interstate Commerce Commission?

A. It is, yes, recognized in this way for one: that the Interstate Commerce Commission has laid down a fundamental and primary rule, you might say that rates which are higher than the combination of locals are prima facie unreasonable.

Q. I hand you a pamphlet having the title:

"Regulations Governing the Construction and Filing of Freight Tariffs and Classifications, and Passenger Fare Schedules.

Administrative rules.

Revised by Order of the Commission."

Is that an official publication issued by the Interstate Commerce Commission?

A. Yes sir.

Q. I will ask you to read from rule 56 B, on page 81 in that publication, which I understand to be one of the regulations
1643 of the Interstate Commerce Commission.

A. (Witness reads:)

Many informal complaints are received in connection with regularly established through rates or fares, which are in excess of the sum of the locals between some points.

The Commission has no authority to change or fix a rate or fare except after full hearing, upon formal complaint. It is believed to be proper for the Commission to say that if called upon to formally pass upon a case of this nature, it would be its policy to consider the through rate or fare which is higher than the sum of the locals between same points as prima facie unreasonable and the burden of proof would be upon the carrier to justify such higher rate or through fare.

Q. Has the question as to inequalities between state and interstate rates arisen on complaints made before the Interstate Commerce Commission, to your knowledge?

A. It has. Numerous complaints have been filed before the Interstate Commerce Commission by various sections, as to inequalities in rates generally. Those inequalities may exist as between two interstate rates, or as between an interstate and a state rate.

In other words, we are obliged, in order to keep rates on a parity, so as to permit various commercial centers to compete for
1644 traffic in a given territory, to keep our rates on a relative adjustment. The rates in and of themselves may be higher or lower, but the parity as between the sections is the one feature

which the commercial bodies, such as exist in Memphis, Little Rock, Fort Smith, St. Louis and elsewhere, look after principally. And we have many complaints where rates have been established from one section and not properly adjusted as to others—or what they consider not properly adjusted; many complaints have been made before the Interstate Commerce Commission.

Those complaints take the form first of what is known as an informal complaint. In other words, the shipper or the man in charge of the shippers Freight Bureau writes to the Commission an informal complaint, laying the matter before them. The Commission mails that to the railroads and asks them for their views and if they are prepared to meet the request. Sometimes we find those requests are logical and do meet them. Other times we feel we cannot meet them and we so advise the Interstate Commerce Commission. If the shipper or the Freight Bureau, is not satisfied with this decision, a formal complaint is entered and the matter goes to a hearing.

But there is that pressure at all times on us to keep our rates on a relative adjustment, so that even if we felt it was to our interest to disregard the relative adjustment as between commodities, we know we cannot successfully do it because there is this power behind us, the Interstate Commerce Commission, that forces that situation, if it is a just one.

1645 Q. And is the principle upon which the Interstate Commerce Commission acts indicated in the quotation you read from that regulation awhile ago?

A. Not necessarily, although that fixes it to some extent. In other words, we have to keep our rates within the combination of the locals—that is, reasonably so.

Q. Mr. Perkins, does the Western Classification apply to all freight shipped into and out of the territory that is governed by that classification?

A. Fundamentally, yes. We have a few exceptions of course to the general classification.

Q. How do the rates for interstate traffic compare with the rates for Arkansas state traffic? Are they higher or lower? Usually what is the comparison between intrastate and interstate rates, for the same distance?

A. For the same distance the interstate rates are generally higher than the state rates.

Q. Have you prepared a statement containing a comparison of the intrastate rates of Arkansas, Kansas, Louisiana, Missouri, Oklahoma and Texas, and also containing a comparison of the intrastate rates in Arkansas with the interstate rates of Arkansas, and Louisiana, Arkansas and Missouri, and Arkansas and Oklahoma?

A. Yes sir.

Mr. HILL: Have you taken in Missouri A or Missouri B?

1646 A. Missouri B I think.

Q. Do you know?

A. No sir I cannot say positively now, because that was made up by my office from the tariffs.

Q. The Missouri rates are divided into two parts.

A. Yes sir, A and B.
Q. North and South of the Missouri Pacific Line?
A. Yes sir.

Mr. MOORE: He can put the initials A or B as the case may be on this statement.

The WITNESS: I want to say, as explaining that exhibit and the commodities it covers, that the commodities were taken from the commodities shown by the Auditing Department as the commodities which were actually handled in the State of Arkansas. In other words, we took the commodities we handled intrastate in Arkansas and compared them with the commodities handled in other States.

Q. In other words, do you mean to say it is based on actual movement of traffic?

A. Yes sir actual movement rather than picking out any commodity which might look good. We took everything that was moving to any extent at all.

Q. When were those rates in effect upon which that exhibit 37 is based?

A. The rates were in effect in 1907.

1647 Q. Mr. Perkins will you file this statement as Exhibit 37 to your testimony?

A. I will.

The statement referred to is marked C. E. Perkins Exhibit 37. Said exhibit is in the words and figures following, towit:

For Exhibit 37, see Volume 8, page 5376.

1648 Cross-examination.

By Mr. HILL:

Q. In this exhibit 37 you have just filed, I see you carry your distances only to 100 miles, both interstate and intrastate.

A. Yes sir.

Q. Do you think that is a fair comparison Mr. Perkins?

A. I do, for the reason that the average haul of intrastate business is approximately 70 miles. We are comparing interstate rates against intrastate rates and for the actual service.

Q. How do you get an average haul? Do you get the average by taking the long and the short hauls?

A. We get the average by taking the figures submitted to us by the accounting department.

Q. That is made up by taking the long and the short hauls and combining the two.

A. Yes sir, that is true, to a certain extent.

Q. And you have taken only the average length of haul which is made up of a shorter and a longer length of haul than that?

A. We have taken a figure that is something longer than an average haul in the state.

1649 Q. About 28 miles?

A. About 30 miles.

Q. I think the average intrastate haul is 72 miles and the aver-

age interstate haul is about 224 miles, isn't it? Now do you think any comparison is fair on that, where you take 100 miles, when these averages are made up of the long and the short hauls, both?

A. I think so.

Q. That is your opinion as to the fairness of it?

A. My opinion is based on the fact that the short hauls are naturally a great deal more in evidence than the long hauls. Otherwise the average in the State of Arkansas would not be down to 70 miles.

Q. Are they in evidence? You have put in evidence the average hauls of interstate at 224 miles and aren't they as much in evidence as the average state haul of 72 miles?

A. I am not comparing a rate on one mileage as against another mileage.

In other words, I have taken the average movement, represented in the State of Arkansas, and compared that with the same mileage on interstate traffic.

Mr. MOORE: Allow me to make a suggestion to obviate any suggestions of unfairness:

I will ask Mr. Perkins if he can prepare a small statement comparing 200 miles and 300 miles.

A. I can. We did not make this mileage out because it
1650 looked better than the other, but simply because it represented what I thought to be the facts.

Mr. HILL:

Q. This exhibit, so far as it goes, is just to show a comparison of the short hauls of 100 miles intrastate and interstate, isn't it?

A. Yes sir.

Q. The intrastate hauls on an average are much longer than 100 miles, aren't they?

A. That is true.

Q. And this could not be representative, clearly, of interstate movements?

A. This would represent a comparison of an interstate movement for the length of the haul given, as compared with the same haul on state traffic. Naturally our rates vary as distance varies and we could not make any comparison as between state and interstate business, so far as I can see, unless we took what was the actual movement in the state and compared that with the same distance interstate.

Q. Your interstate business, as a general proposition, moves a much greater distance than the figure you use here as a comparative basis, does it not?

A. Yes sir, the volume of it does, as shown by the representative mileage. But there is business, of course, which moves these distances.

Q. Of course there is. But business in any volume
1651 does not move on this basis, does it?

A. No sir.

Q. And yet you have taken this distance as the basis of a comparison with the state business?

A. Yes sir.

Q. And you consider that fair, do you?

A. I certainly do.

Q. Take cement down here on that statement: you have Arkansas and Louisiana, for a distance of 25 miles cement 11½¢. Have you an interstate distance tariff?

A. Yes sir, we have an interstate distance tariff.

Q. What is the number of it?

A. I cannot give it to you off-hand. I can furnish you that.

Q. Isn't it a fact that your interstate tariffs are not made on distance tables but on distances from point to point?

A. No sir. For short distances we must have a distance tariff.

Q. You have a great many interstate tariffs that would be in force between Arkansas and Louisiana, haven't you?

A. No sir, we have not a great many.

Q. How many?

A. I cannot tell you off-hand just how many. I would say perhaps all told as many as 10, applying on the various commodities.

Q. From which one of the ten is this figure taken
1652 (indicating exhibit 37)?

A. This figure is taken from our interstate distance tariff, which is the only tariff we have applying from station to station, interstate, between Arkansas and Louisiana, in the same manner as between station and station in the state of Arkansas.

Q. I wish you would furnish me a copy of that tariff.

A. I will do so.

Q. I see you have taken grain here and made a comparison of the interstate grain rates and the intrastate grain rates: how is the grain movement regulated, in the rate making way?

A. I do not know just exactly what you mean, Judge.

Q. Is it regulated by a distance tariff, or point to point, or by zones, or how is it regulated?

A. As relates to interstate traffic, or short hauls.

Q. Interstate?

A. For the movement between points, except the movement you might say from the primary market, the rates are based very largely on the distance tariff rates.

Q. Except from the primary market.

A. Yes sir. For instance, business moving from Kansas City or Wichita, or from the grain fields, we publish through rates, specific commodity rates.

Q. Isn't that grain, then, distributed after it reaches the consuming territory, under that through rate?

1653 A. To some extent it is and to some extent it is not.

Q. To what extent isn't it? What percentage of it is not distributed under the through rate?

A. I cannot say as to the percentage and I cannot make even an estimate.

I think I see what you are driving at. There are some lines that operate what we call the transit privileges.

Q. Your line is one of them?

A. We do.

Q. We are talking about your line.

A. Now this transit privilege applies generally to points on our line in the same direction of haul. If there is to be a movement in the back haul direction, if you please, the business is very likely moved under the distance tariff rates.

Q. That is comparatively speaking a very small movement so far as the Iron Mountain in Arkansas is concerned, is it not?

A. No sir, so far as the Iron Mountain in Arkansas, particularly when this statement (exhibit 37) was made in 1907, a very large portion of our business for short hauls was handled on the mileage scale; because the rates between two points in Arkansas, for instance, were so low that a man located at Little Rock, for example, could go out to Oklahoma, where there is particularly low price grain, and where grain might be much cheaper than in Kansas City,
1654 and as a matter of fact bring grain over the Rock Island, because he could get it cheaper in Oklahoma than in Kansas; and when he wanted to ship out to a local point on our line, he used the Arkansas mileage scale.

Q. What percentage of grain would be represented by such a movement as that?

A. At that time I understand it was quite large, but at this particular time it is not large.

Q. What do you mean by "quite large"? I am trying to get something tangible.

A. A great deal of it was handled on that basis. I cannot tell you just exactly how much because I was not here at the time.

Q. Don't you know that the great bulk of that movement is on the rate from the producing to the consuming district and when it got into large centers like Little Rock, Pine Bluff and so on, it was not distributed on the local rate.

A. No sir I do not.

Q. Isn't it a fact that not more than 5% was distributed on the local rate?

A. No sir. If I were to make an estimate I would say 50%, at the time this statement (exhibit 37) was made, on account of the low rates in effect on grain in Arkansas.

Q. Were you connected with the St. Louis, Iron Mountain & Southern Railway at that time?

1655 A. No sir I was not. I was connected with the Kansas City Southern and I was familiar with the conditions at that time.

Q. But even if 50% of it was distributed on the local rate, after reaching Little Rock or any other local point, you mean by that 50% that it was distributed out of Little Rock, or some other local point? Of course a large amount of it would be consumed in Little Rock and those other centers.

A. Yes sir. I mean 50% out of Little Rock.

Q. Or any other distributing point?

A. Yes sir any other distributing point.

Q. 50% of all which went into the distributing points like Little Rock, Russellville, Pine Bluff, Fort Smith and so on, took the through rate from the zone where it originated?

A. Yes sir.

Q. There seems to be a difference between you and the other witnesses as to the amount which went out on the local rate, which was in fact distributed on the local rate.

You know a large part of that grain would be utilized in those grain centers, where it went on the through rate.

A. Some it would be. I would not say all of it.

Q. I said a large part.

A. Naturally there is a good deal of it consumed in those places. The larger the town the greater the consumption.

Q. Take those large centers of Arkansas, such as Little
1656 Rock, Fort Smith, Pine Bluff, Texarkana, and they would consume a large part of it which never would move out of the trade centers at all, wouldn't they?

A. If you mean a large part as compared with the total I would say no; but if you mean there was a large amount of grain consumed there I will agree with you.

Q. That is what I mean. I may not be apt in the use of language. There would be very little of that back-haul you are referring to, Mr. Perkins, wouldn't there?

A. I would say it would be considerably less than the straight-away haul, but there would be some part of it.

Q. Mr. Perkins is there any intrastate movement of grain in Arkansas except such grain as originates outside of the State and moves the way you have just explained, that is of any moment at all?

A. No sir, I think not.

Q. You have made a comparison then on the grain rates of a movement of grain for 100 miles interstate with 100 miles intrastate; and as a matter of fact there is no movement of grain interstate but what goes over 100 miles, is there?

A. Oh yes, there is.

Q. Where does it come from?

A. Oh there is a whole lot of grain that moves interstate that does not go 100 miles.

Q. Where does it come from?

A. We have grain from Oklahoma into Arkansas, for instance, that does not move 100 miles.

1657 Q. Do you have any grain moving from Oklahoma into Arkansas?

A. Yes sir.

Q. Where is it raised?

A. It is raised on our Oklahoma line North of the state line and from there up to Kansas. We have grain all the way.

Q. Have you been through that country recently?

A. Yes sir.

Q. Did you see much grain, growing in there?

A. I saw lots of corn.

Q. Where?

A. In just what part you mean?

Q. What part.

A. Sallisaw, and north.

Q. From Sallisaw to Coffeyville is furnishing corn to Arkansas?

A. Yes sir. I know of several movements that have come into Fort Smith. They have been getting a great deal of grain, corn——

Q. Is that one of those movements that has been denominated as a "negligible quantity"?

A. I say there is some. You asked me if there is any and I said yes, there is some.

Q. I will modify my question. Is it considerable?

A. There is some movement. Of course it is not a move-
1658 ment to be compared with the movement from the markets of Kansas North. But there is some movement.

Q. It is one of those inconsiderable movements, isn't it, Mr. Perkins?

A. There is just as much movement as there is locally in the State, and therefore the comparison would be good.

Q. I did not understand your previous answer about what was in the State.

A. I would say that the movement interstate would probably compare favorable with the movement in the State—in other words, the comparison would be there.

Q. Didn't you say you did not have any intrastate movement, within the State?

A. I did not.

Q. Be that movement intrastate or interstate, that is a very small part of the corn movement that is carried into Arkansas, isn't it?

A. It is a small part.

Q. Very small. Your comparison in this table fits on a very small movement of grain, isn't that a fact?

A. Well, I would not say it fitted a large part, no sir.

Q. Isn't it a very small proportionate part of the grain movement?

A. It is quite small. I would not say it is very small.
1659 At the time this statement (Exhibit 37) was made, the business I would say was quite heavy. I know from my own knowledge, as a matter of illustration, that the Kansas City Southern took lots of grain into Texarkana and it was re-shipped from there to points on the Iron Mountain and points on the Cotton Belt, on the Arkansas Commission Tariff—lots of it.

Q. But compared with the total grain movement into the State, which moved under these rate, it was a small part of it?

A. Well, it depends upon what you call "small" Judge.

Q. I want you to say what is small. I would like you to give a percentage on it.

A. It is a question I could not give a percentage on to save my life. But it was quite considerable, I can say that.

Q. What is "quite considerable"? You object to my word "small" and I would like you to define what is "quite considerable."

A. Quite considerable are words that have a certain meaning to me in the English language.

Q. I want to get that expressed in relation to the whole.

A. You are trying to make me give a percentage I cannot give.

Q. If you cannot give the percentage, can you approximate it?

1660 A. No sir. Whatever percentage I could give would be more or less of a guess. But I do say there was a very considerable amount of business handled and I have already stated that at the time in my mind it would be fully 50% of the business which was handled out of these grain centers.

Q. You are talking about one thing and I am talking about another.

I understood your estimate of 50% of grain was after it reached the distributing point and was sent out locally.

A. That covers practically all the movement of grain intrastate in Arkansas.

Q. That is what I understood you to say and you corrected me awhile ago and said you didn't say that.

Now excluding such grain as might be raised in the State and shipped from one point to another——

A. There is practically none of that.

Q. That is negligible?

A. Yes.

Q. Grain raised in Oklahoma and shipped into Arkansas is also negligible?

A. No sir.

Q. What is that?

A. In certain seasons of the year it is 100%.

Q. 100% of the grain shipped into the State?

A. At certain seasons of the year 100% of the grain shipped into State is from Oklahoma.

1661 The situation is this: when Oklahoma has a grain crop and it is getting to be more and more of a grain producer every year, the prices of Oklahoma given delivered at Arkansas points is very much less, considerably less, than from any other producing territory. It is less than from Kansas because the freight rates are lower.

Q. That has no bearing on this.

Mr. Moore: Let him finish his answer.

Mr. Hill:

Q. I am asking you about the 100 mile haul.

A. You did not ask me that in your question.

Q. I am talking about the 100 miles you use in this Exhibit 37. 100 miles on your line would take it away beyond Wagoner.

A. Yes sir.

Q. I am asking you about 100 miles on grain from Oklahoma into Arkansas; isn't that also a negligible quantity?

A. Judge, I am not an expert on that term.

Q. Some of these other gentlemen are, your counsel is.

A. I would say it is a small quantity.
Q. You know that territory from Fort Smith up to Wagoner?
A. I know it tolerably well. I have been over it several times.

1662 Q. The amount of grain it would raise and ship into Arkansas as compared with the amount of grain as a whole shipped into the State, would be an exceedingly small quantity, wouldn't it?

A. Yes sir, compared with the whole. But that is not the only line that crosses the boundary. I simply gave that one as an example.
Q. On what other line could you ship grain from Oklahoma into Arkansas?
A. I would say the Midland Valley.
Q. Is that one of your lines?
A. No sir, that is the only line we have. Is that what you are driving at?
Q. And this Exhibit 37 is a schedule of your rates?
A. Yes sir, a schedule of our rates.
Q. And is that a schedule of the Midland Valley rates?
A. No sir.
Q. Well, we are talking about the Iron Mountain and not the Midland Valley.

Mr. MOORE: Do you mean to say that the movement from Oklahoma was only a short distance movement into Arkansas?

A. No sir, I simply gave that as an illustration.

Mr. HILL:

Q. Have you any other 100 mile movement on grain interstate into Arkansas?

1663 A. I do not know exactly on 100 miles because I cannot give the distance; but there is a considerable movement from the other end of our line, from Southeast Missouri into Arkansas.

Q. Give the points where that would move.
A. I do not think I could give you the point off-hand, but I know there is a movement all along that line. I do not remember from just what points.
Q. I will call your attention to Newport, which is the first point of any size coming that way, and the distance is 85 miles; so there could not be any considerable grain movement.
A. There is a movement that is going on right along to points that are practically on the State line, to the Jonesboro-Lake City & Eastern Railroad.
Q. Is that one of your roads?
A. We are handling grain in there today.
Q. You are handling in on this tariff in this Exhibit 37.
A. No sir.
Q. Confine yourself to what is in evidence, please.
A. You asked me if there would be a movement.
Q. I asked you if there was a movement that would be affected by this Exhibit you have put in here.

A. There no doubt is. I cannot give you exactly the movement to our points just over the State line, which of course would
1664 have to embrace this mileage. We haven't gone far enough. We can go further and give you the same percent as in this exhibit, and then we will get a very large movement.

Q. Isn't it a matter of fact that the heavy grain movement—I will not express it in adjectives or in percentages, but isn't it a fact that the heavy grain movement on your line into Arkansas is a movement from the Northwestern producing States?

A. No sir, it is not.

Q. You think it is not?

A. No sir, it is not.

Q. Where is the heavy movement of grain?

A. The heavy movement of grain varies.

Q. What distance?

A. It is coming right now principally from St. Louis and Illinois.

Q. What is the distance of haul when it comes that way into Arkansas?

A. About 300 miles I should say, on an average.

Q. That all goes into Arkansas on the zone rate, doesn't it?

A. No sir.

Q. What part of it does not?

A. I do not know that any part does.

Q. Haven't you a zone that covers grain shipments from
1665 St. Louis and Illinois into Arkansas?

A. No sir.

Q. At any rate, the great grain movement, the greater part of the grain movement, is over 100 miles?

A. Interstate?

Q. Yes.

A. There is no question about that.

Q. If there is no question about it, then your comparison in this table (Exhibit 37) of grain rates for 100 miles with intrastate grain rates has no value, has it?

A. Yes sir I think it has a very decided value. I have tried to show, and I think I have explained, that the movement interstate and intrastate under these rates are in my opinion about equal.

Q. From what tariffs did you take these grain rates you have put here in this Exhibit 37; you have a great many grain tariffs, haven't you?

A. What are you speaking of now?

Q. These interstate grain rates you have put down here (Exhibit 37).

A. The interstate grain rates are taken from the interstate distance tariff as compared with the state distance tariff.

Q. Is that a zone tariff or is it a distance tariff?

A. It is a distance tariff.

Q. Then these figures you have given here do not represent
1666 any of the grain rates that are based on the originating zone?

A. I do not know what you allude to as "originating zone;" we haven't any originating zone on grain.

Q. I am not using exact terms, but I will tell you what I mean: up here in Kansas and Missouri and these Northwestern States where the grain is grown, grain is carried into Little Rock for instance on the same rate—I would call it zone because I thought that was a good term, but if I am wrong about that I wish you would explain what is the correct term to use.

A. You are not wrong about the term, as I understand the term. In other words, we say a zone rate is the same rate as goes to a large blanketed territory.

Q. Or goes from a large blanketed territory?

A. Yes sir.

Q. Or both?

A. Yes sir.

Q. Isn't that the same on grain?

A. No sir, it is not.

Q. Didn't you have in 1907 a zone rate from Missouri and Nebraska into Arkansas?

A. No sir.

Q. Didn't you have a zone rate into Arkansas from Nebraska and Missouri?

1667 A. No sir. There are some rates which are naturally the same, but they are not made on a zone. The distances are not on a zone. There are a number of points which naturally from their situation take a Little Rock rate. The rates, for instance, to other points beyond grade up and take a differential higher than Little Rock. In other words it is not what I would call a zone?

Q. What do you call a zone?

A. As I have explained, I would call a zone a considerable territory taking the same blanket rate.

Now our grain rates from Kansas vary very largely as to the points of origin. The rate from Wichita is one figure and the rate from Ellsworth, Kans., is another figure.

Q. I did not say all that country.

A. And going South the rate to Little Rock is one figure, the rate to Benton is another figure, and the rate to Hot Springs is another figure. So we do not figure, and anybody else does not figure, that we have any grain figure on our zone rates.

Q. I hand you freight tariff No. 5714-A, marked Missouri Pacific-St. Louis, Iron Mountain & Southern tariff, and ask you to examine pages 10, 11 and 12.

A. (After examining papers.) I have done so.

Q. Isn't it a fact that that tariff names a blanket rate of 19 cents per hundred pounds on grain in car load lots from all points on the Missouri Pacific between Washington, Mo., and St. Joseph, Mo., to all points on the St. Louis, Iron Mountain & Southern

1668 from Bismarck, Mo. to Pine Bluff, Ark. and out as far as White Oak, Ark.; isn't that a fact?

A. (After examining tariff.) That is substantially correct. I have not checked up all the points you mention but the rates were at that

time the same from points between St. Louis and Kansas City. There is, of course, a reason for that.

Q. I am not talking about reasons now. You can explain that. I am trying to get at the facts.

A. I am getting on to the adjustment.

Q. You can explain all your reasons, but I am trying to get the facts now, Mr. Perkins.

Look at this map that is drawn to illustrate the question I have just put to you. This zone, as I call it—or any other name you choose to call it, designated as "A" indicates the points where that grain originates; and this zone designated on this map as "B" indicates points to which it may be shipped upon the same rate.

I ask you if that is not a correct illustration of the movement of grain from points "A" to points "B."

A. (After examining map.) I should say that was substantially correct. I cannot say it was absolutely correct as to all of these points.

Still, that does not change my mind about our grain rate being a zone basis. This (indicating "A" on map) is a very small proportion of our grain producing territory and these rates in here are
1669 carried on account of the rates between being intermediate. The same as we carry on the Kansas City line from Kansas City to Coffeyville, that line being intermediate wiith Kansas City. The Kansas City rates are the maximum and fix the rates to be applied at the points mentioned. That, however, we do not designate as a zone basis.

When you get West of the line mentioned, that is, the line from Kansas City to Coffeyville, the rates vary very materially. In other words, they grade up as you go West, all of our rates.

So there is not what we call a zone basis for making rates. It happens sometimes that the conditions are such as to make the same rates but that would not necessarily imply a zone.

Q. While you do not call it a zone, or call it a circle, or call it a blanket rate, or give it any name you choose—it is a fact there is a territory here in the grain producing country indicated on this map as "A" in which the grain is shipped into a large territory, including portions of Arkansas and Missouri (indicated as "B" on this map) at the same rate, isn't it?

A. I would say that is substantially correct. That is, without attempting to verify each identical point within the boundaries you have there, but substantially, I think, that is correct.

1670 Q. Mr. Perkins I would be glad if you would verify those boundaries and attach this map as an exhibit to your testimony.

A. At what time?

Q. Within any reasonable time.

A. I mean during what period?

Q. This is during 1907.

A. During the time this tariff was in effect?

Q. Yes and if there are any inaccuracies in this I would like to

have those corrected before it is finally put into the record of the case.

When you are verifying that, Mr. Perkins, I would also ask you to verify a statement descriptive of it, which you will find attached to the map, which is attempted to be made up from your tariff.

A. Very well.

Q. This also includes a 23 cent rate on wheat as well as the grain rate which was included in my first question.

The map referred to is marked C. E. Perkins, Exhibit 38.

And the statement attached to same is marked C. E. Perkins Exhibit 38-A.

Said exhibits are in the words and figures following, towit:

1671 Mr. HILL:

Q. Mr. Perkins in your Exhibit 37 I see you have put down coal rates, comparison interstate and intrastate: isn't it a fact that coal moves on a blanket rate?

A. Coal moves quite largely on a blanket rate, but short distances it does not necessarily move on a blanket rate.

Q. Isn't it a fact that all the coal moved in Arkansas on your line moves on a blanket rate?

A. No sir..

Q. What does not?

A. To a shorter distance any coal North of Little Rock would move on a mileage rate.

Q. But all of your coal moves into Little Rock on a blanket rate, doesn't it, and then goes out on a mileage rate?

A. Yes sir.

Q. I do not know whether that was a fact in 1907. How was that? I know that is a fact now.

A. I cannot answer that question accurately, Judge, because I was not connected with the road then. I know the zone — used to be in at a certain time but I do not remember just when that was, because I was not connected with the road at that time.

Q. I believe you said you would furnish us this interstate distance tariff you made this on.

A. Yes sir.

Q. I would like to examine you on that and I will not
1672 question you further on this exhibit 37 until I get that. I wish to look into this exhibit a little further.

In answer to a question from Mr. Moore I understood you to say that the lumber rate furnished a good revenue to the Company, compensatory revenue or something of that kind; is it a fact you said that?

A. I do not recall that I stated that. I may have.

Mr. MOORE: He stated it was remunerative.

A. Yes, that is what I said.

Mr. HILL:

Q. Is that a fact?

A. Yes.

Q. How do you know that, Mr. Perkins?

A. It would be rather hard to tell you Judge just how I know it. I have been following it, however, for a good many years. Our tonnage of lumber is quite considerable on the Iron Mountain, and our management, who are familiar with the cost of operation, seem tolerably well satisfied with the rates. They would like us to get a little more, but——

Q. Have you any data of the cost of the lumber traffic in order to determine the cost of handling the lumber?

A. Not the lumber traffic taken by itself, no sir.

Q. I believe you gave us the figures on the revenue derived from the lumber traffic at six mills per ton per mile, didn't you?

A. Approximately that, yes.

1673 Q. You have data by which you can ascertain your revenue on any given commodity for the whole system, haven't you?

A. That is furnished us, yes.

Q. By whom is that furnished?

A. By the accounting department.

Q. That is compiled from the way bills?

A. I do not know where it is compiled.

Q. It could not be compiled any other way, could it? It could not be furnished any other way, could it?

A. I do not know. Of course the original information as to the movement, etc., must come from the way bills.

Q. And your road can ascertain that from its records?

A. It is furnished to us, as I say, by the accounting department.

Q. Has your road furnished you any record of the cost of the movement of lumber or any other article?

A. No sir.

Q. When you go to make a rate you have no data whatever before you as to the cost of the service on that particular commodity?

A. Taking it as a particular commodity, no sir, none whatever.

Q. Have you any data of the cost of the service as a whole?

1674 A. Yes sir, we know as to the whole, about what it costs.

Q. How do you get at it?

A. It is furnished to us by our accounting department. It comes to me, really, through our traffic manager, or Vice President.

Q. I do not mean the channels through which it comes to you. I mean what is that information? In what form is that information expressed to you?

A. I do not know that I could answer that question, Judge.

Q. Is it based on the revenue or is it based on tons per mile or train mile, or what basis? I suppose there is some basis for it.

A. It is based as a whole, taking all of the commodities and putting them into one jack-pot you might say, the operation of the line as a whole is about all we have.

Q. By what unit is that measured?

A. In rate per ton per mile.

Q. Has that any value?

A. In what way?

Q. As a guide to you in ascertaining how much revenue you should receive from different commodities?

A. Yes sir.

Q. What value has it to you in that way?

A. As a guide, in this way: we know about what our gen-
1675 eral revenue is and about what our general cost is and we know from our classification the relative adjustment you might say which we must assign to the various commodities to bring about that revenue. Some articles we know are handled at less cost and must be handled at a lower rate than some other commodities and our rates are adjusted really on a relative basis. That is, on the various commodities. The rate which we would assign to each one varying of course as to the commodity, as to its value and as to its bulk and as to the direction of the movement, and as to the length of its movement.

Q. Then do you use these ton mile statistics showing the cost per ton per mile of your entire traffic in order to divide the charges to be apportioned to one traffic as against another kind of traffic?

A. No sir, I cannot say that we would do that.

As a matter of fact our rates are fixed—that is, our general line of rates you might say, are a fixture. They have been established for a great many years. There have been changes in this rate or that rate, but the general rate fabric has been in existence, of course, with the changes that are necessary, for years. We know about what result that rate fabric brings us. We know we are charging a little more on one article than on another. But that relative adjustment with all these other incidents I have men-
tioned—that is, the direction of the haul, the length of the
1676 haul, the bulk and value of the commodity to be handled, the commercial conditions, all govern us in making a rate on any specific commodity.

Q. That rate is not made on the cost of the service, is it?

A. Yes, fundamentally it is.

Q. What do you mean by "fundamentally"?

A. I mean that the cost of the service enters into our rate making to a very large extent. I do not mean to say by that the actual cost of the service, but the relative cost of the service.

Q. I am talking about actualities and not relations.

A. The only way we could make this is on a relation adjustment. If a man comes in and wants a rate on a car load of stone from a given point to a given point, I cannot tell, and no man living can tell, just what the cost of handling that car of stone is. But I know that if two men come in, one with a car load of stone and the other with a car load of pianos, that it is going to cost us more for the car load of pianos than for the car load of stone.

Q. Anybody who has two grains of sense, even though he is not an experienced traffic man, would know that.

A. Yes sir.

Q. It would not require experience to know that.

A. No sir, but it would require an experienced traffic man to know what the relative adjustment should be.

1677 Q. Where did you get the figures upon which to base that relative adjustment?

A. We did not have actual figures.

Q. Why do you have these ton mile statistics; they must have some value and I want to know what it is.

A. We have to know what our business is making as a whole.

Q. Whether it is making money or losing money?

A. Yes, sir.

Q. The traffic man makes the rates?

A. Yes, sir.

Q. The operating men do not have anything to do with it, do they?

A. Yes, sir, they have a great deal to do with it.

Q. What do they have to do with it?

A. Our Vice President, Mr. Clarke, is in charge of operation, not only of rate making, but of all departments on our road.

Q. He is at the head of all of it?

A. He is at the head and directs not only the operation of the road but to a large extent the rate making of the road. It is to him it goes very often; and not from me direct, but through my superiors, Mr. Flippen and Mr. Johnson. The General Freight Agent does not take these matters up direct. Mr. Clark is the one that has more knowledge on both sides than anybody else.

1678 Q. That is not my question. My question is whether the men operating had it, not the President.

A. He operates it.

Q. But I am speaking of the operating men. The man who occupies relatively the same position in the operating department that you do in the traffic department. They have nothing to do with the rates do they?

A. What position do you refer to?

Q. You can tell me.

A. The Superintendent does not have much to do with it. He may suggest.

Q. He may suggest, but does he?

A. I do not know whether he does or not to tell you the truth.

Q. Did you ever have a suggestion from a Superintendent as to what you should make on certain things?

A. I have had suggestions, yes.

Q. From a Superintendent?

A. Yes.

Q. Based on what?

A. Not based on the cost, however.

Q. That is what I want to know, whether a Superintendent or any one in charge of operation will confer with the men in charge of the rate making, to give them a lot of their experiences in the cost of operation, when you go to fix the rates.

1679 A. It does not go through that direct channel. As I have explained, they both go to a common head. In other words, Mr. Johnson, our Vice President in charge of Traffic, has nothing to do with the operating matters. Our General Manager has noth-

ing to do with traffic matters. But they both report to a common head and that common head directs both channels.

Q. Did you take up any of these detailed questions, like your illustration of the rate on stone, with the Vice President?

A. Generally my conferences with reference to these matters are with our Freight Traffic Manager. He is my next superior officer. If he does not happen to be in the City I would go direct to the Vice President, yes. I have gone direct to him.

Q. To Mr. Clarke or Mr. Johnson?

A. Mr. Johnson.

Q. You would not go to Mr. Clarke?

A. No sir.

Q. You would go to the head of your own department?

A. Yes sir. In other words, we do not go over our direct superior's head in any matters, unless instructed to do so.

Q. What I am seeking to ask is this: if you—and by you I mean the traffic officials, have any direct consultation with the operating officials as to the cost of the service.

1680 A. I think they do. I do not agree with you there.

Q. I am asking you for the facts.

A. Mr. Clarke is an operating man and is in charge of the operating department.

Q. Of course. He is really in charge of your road, isn't he?

A. Yes sir.

Q. While Vice President in name he is practically the President of the Road, isn't he?

A. Yes sir.

1681 Q. I am not referring to him but I am referring, as I explained before, if there is any conference between operating officials less than Mr. Clark, the Vice-President?

A. I would say there is. But I cannot say of my own knowledge on the Iron Mountain whether there is or not. I know as a matter of fact on other roads there is.

Q. We are talking about the Iron Mountain now.

A. I cannot tell you. I have not been with them long enough to know. But in my judgment I will say yes.

Q. If you do not know that answer the question?

Have you any statistics which would show you where the money of your — is made, whether on state or interstate business?

A. Personally, I have not, no, sir.

Q. I am speaking of you in your official capacity. Has your traffic department in its possession any statistics showing the profit or loss on the entire system and the profit or loss in the state of Arkansas, the State of Missouri, or any other state?

A. So far as I know the traffic department has not. I have not such a statement.

Q. Have you ever applied to your commissioner of statistics for any such information as that?

A. I did not know we had a commissioner of statistics. I never heard of him if we have.

Q. You do not know what his duties are?

1682 A. I never heard of him. There may be such an officer.

Q. He seems to be on your pay roll?

A. Perhaps he is. A lot of people are on the pay roll of the Iron Mountain that I do not know of, and never heard of.

Q. How many classifications are there, Mr. Perkins? You have spoken of the western classification: how many other classifications are there in the United States?

A. There are three principal classifications in the United States: the official, the southern, and the western.

Q. Isn't there an Illinois Classification, too?

A. I would not call that a principal classification. There is a classification, I believe, laid out by the railroad and warehouse commissioners of Illinois, that covers only a small territory.

Q. These classifications differ, I presume?

A. They differ in some respects, yes. The principal difference in them, is that they are applied to different rate conditions.

What I mean by that is, in the official classification territory their rates are only six classes, one to six, with two intermediates, minor classes, you might say. While in the western classification we have ten and in the southern approximately 13.

Q. Each of these classifications have many exceptions haven't they?

1683 A. There are exceptions, yes.

Q. The southern has a great many, hasn't it?

A. The southern has considerable, yes, in the different sections of the territory, I believe. I am not very familiar with the southern classification. I have not worked in that territory.

Q. The western classification has many exceptions?

A. The western classification has some exceptions, yes, sir.

Q. I believe you stated that the Arkansas Commission and other state commissions, adopted the western classification: is that a fact?

A. Yes, sir, as a general rule that is the basis for their classifications.

Q. I will call your attention to the standard distance tariff reading as follows: "Subject to western classification as adjusted to Arkansas traffic."

A. Yes, sir.

Q. That would not be governed by it, would it?

A. Yes, sir.

Q. But governed by it subject to its own rules?

A. Subject to the exceptions which might be made to that classification.

Q. And wherever they have minimums or any other rule that would conflict with the classification, the tariff would be applicable to their own rule and not the western classification?

A. The tariff always governs.

1684 Q. You say there is a close relation between interstate and intrastate rates: just what is that relation. I do not like adjectives very well so I wish you would explain the actual facts?

A. You will have to tell me the rates you have in mind.

Q. That was your statement not of any particular rate but a general proposition.

A. If you want any explanation I will have to know——

Q. Make your explanation any way you please. I want to know just what you meant by "close relation between interstate and intrastate rates"?

A. I mean by close relation, that the interstate rates or the intrastate rates, where not governed by state commissions, bore a relation one to another and as a general proposition where one is changed the other must be.

Q. Now what relation should they bear one to the other?

A. There is no fixed relation. If you mean on percentage?

Q. I mean on the rates themselves. You have spoken of this parity of rates and the close relation of rates: now, I want to know just what that relation should be.

A. I cannot give you any definite basis or any definite relation which they would bear. However, there is this relation, that when one changes the other is almost always bound to change. I will not say always, because there are lots of exceptions; but the
1685 general rate basis applicable into a given state depends very largely if not entirely on the state adjustment.

Our rates, as an example, into the state of Texas from interstate points, are based entirely on the rates as fixed by the commission of the State of Texas.

Q. What are you going to do when your road crosses two states and there is a great difference in the rates in those two states? Take Arkansas and Louisiana: Louisiana I believe has the highest rate of any state east of the Rocky Mountains and west of the Mississippi River; and Arkanas has lower rates than Louisiana. You have a line running between those two states. When you come to adjust these relations between the two what are you going to do with your state rates?

A. They have to be graded from one to the other.

Q. How do you grade them? That is what I want to get at, the actual facts.

A. We sit down with paper and pencil and take all the conditions that enter into rate making. There may be a dozen of them. And fix those rates. In other words, rates may be fixed by an altogether different road—for instance, the rates from Memphis into the state of Arkansas are not fixed by the Iron Mountain road to any very great extent.

Q. That is a commercial condition that is controlling and not the relation between state and interstate, isn't it?

A. It is the condition controlling our railroad.

1686 Q. I understand that. You say now this close relation, this Siamese twins relation, between state and interstate,—and I am trying to find out just what the bonds of union between the two is as an actual fact?

A. The bond of union is this: as between Arkansas interstate rates and Arkansas intrastate rates, if you want me to take up that feature of it I will and explain it.

Q. I want you to explain what this relation is. How would you fix an interstate rate based on an intrastate rate or vice versa?

A. The rates fixed by the intrastate rate in Arkansas fixes necessarily the rate from the border points.

As an example the Arkansas Commission fixed a maximum rate on sugar of 13c. to apply between any points in the state of Arkansas. That made a rate on sugar of 13c. from Helena, Arkansas, to Fort Smith, Arkansas. The rate from New Orleans, Louisiana, to Helena, Arkansas, was ten cents. When that 13c. rate was put in effect, it was considerably lower than it had been and it forced us to re-adjust all of our interstate sugar rates from New Orleans to Arkansas, to meet those conditions.

Q. You had an interstate rate from New Orleans to Memphis, didn't you, for about ten cents, wasn't it?

A. Yes.

Q. Then the Arkansas Commission rate for one-half of that distance was 13 cents, wasn't it?

A. No, sir. One-half perhaps, and perhaps double the dis-
1687 tance—well, I can't say double, because you could not get that. but it was some greater mileage, take it all over the state, and take as many routes as you want, go around in a circle if you wanted to and you would still get only 13 cents for it. The rate from New Orleans to Memphis is a water competition rate.

Q. Isn't it a fact that Arkansas tariff applies to only 300 miles?

A. My recollection is it applies to 400 miles but I may be mistaken.

Mr. MOORE:

Q. Do you mean to say that the Arkansas Commission had any application to anything over 300 miles?

Mr. HILL: That is my understanding.

Mr. MOORE: Is not 300 miles the maximum and does not the rate apply to everything in excess of 300 miles? I think it applies to all in the state.

Mr. HILL: That may be possible but you cannot get a rate, except in a few cases, a negligible quantity.

But going back to our relation, say you had a rate of 13c. from Memphis to Little Rock and a rate of 10c. from New Orleans to Memphis, what relation are you going to establish between those two rates?

A. New Orleans to Memphis is not the rate that we were considering. It is the rate from New Orleans to Arkansas, an interstate rate.

Q. Didn't you say the Memphis rate controlled the Arkan-
1688 sas rate on that.

A. No, sir, I didn't. I said the sugar proposition based on the combination through Helena.

Q. Take Helena then. You had a rate from New Orleans to Helena of ten cents?

A. Yes, sir.

Q. Which was the same rate as to Memphis?

A. Yes. However, it was the Helena combination that forced us to make the reduction, and not Memphis.

Q. You had ten cents from New Orleans to Helena and the Commission established a rate of 12 cents to Arkansas?

A. We had a through rate on sugar from New Orleans to Fort Smith of 27 cents per hundred pounds. We had a through rate on sugar from New Orleans to Texarkana of 25 cents per hundred pounds.

Now, when the Commission established their 12 cent rate it made the combination to any point in the state of Arkansas from New Orleans 25 cents per hundred pounds.

Q. What is the proper relation that there should have been between them, you having taken sugar as an illustration?

A. The relation that must follow between them is not higher than the combination of the locals in that illustration.

Q. You had the 10 cent rate New Orleans to Helena?

A. As a matter of fact there is no movement locally in the state of Arkansas on sugar. The rate was put in merely to force
1689 the through rate down. And they knew we had to come down—that is all.

Q. Would it cost you any more to haul sugar from New Orleans to Fort Smith than to haul sugar from New Orleans to Helena?

A. Yes.

Q. How much more?

A. I cannot say how much. The distance is greater a good deal from New Orleans to Fort Smith, than from New Orleans to Helena.

Q. Would it cost you any more to haul it from New Orleans through Helena to Memphis than it would cost you to haul it just to Helena?

A. Yes, sir, it would probably cost us more.

Q. Would those rates you have given now, the 10c. to Helena and the 10c. to Memphis, 27 cents to Fort Smith, 25c. to Texarkana, represent the cost of the service?

A. On sugar?

Q. Yes.

A. I cannot say whether they would or not.

Q. You know they would not, as a matter of fact, don't you? There could not be that difference because of that service, could there?

A. There certainly could be that difference. There certainly could.

Q. You think it is a fact it does exist, that *this* rates
1690 represent the cost of the service?

A. The service from New Orleans to Texarkana and from New Orleans to Fort Smith, you mean?

Q. Yes, the actual service. I am not speaking of competitive conditions at all. But do those rates represent the actual cost of the service between those different points?

A. I cannot say they represent the actual cost, no, sir. They represent what we feel was a fair adjustment of freight rates.

Q. I understand that, but that is an entirely different proposition.

A. I do not know the cost of handling a car of sugar from New Orleans to Texarkana and the cost of handling a car of sugar from New Orleans to Fort Smith.

Q. If you don't know that how could you complain of the Arkansas Commission rate?

A. I was not complaining. I was simply showing you the relation between those two rates. That is what you asked me to show. I am not making any complaint now—our complaint was made long ago.

Q. I have not seen the bond of relation.

A. You wanted to know what the bond of relation was between state and interstate rates. And I understood that you wanted to know what effect a change in state rates would have upon the interstate rates.

Q. And that is your explanation of that?

1691 A. That is one of my explanations. That is one example.

Q. Is such an example as that what you mean by stating that there is such a close relation between state and interstate rates?

A. That is one example to show what a change in the state rates will do to our interstate rates.

I explained in my direct testimony that as a matter of fact a change in the state rates as a whole affected our interstate rates as a whole. In other words, it is not confined to one commodity or one isolated case but covers the whole scale of our rate adjustment from one end of the United States to the other.

Q. In other words, I understand your term "relation of rates," "parity of rates," refers to the adjustment of the rates and not to the cost of the service.

A. I should say that parity existed very largely on account of commercial conditions.

Q. And not on account of the cost of the service?

A. The cost of the service naturally enters into it.

Q. You say the cost of the service naturally enters into it: How much does it enter into it? Take your illustration——

A. It enters into it to this extent, Judge. That if those commercial conditions force us to change our rates that brings about an adjustment that we feel we cannot operate under, we disre-

1692 gard it—in other words, break down the barrier.

Q. How did you arrive at that knowledge, that you cannot operate under it?

A. It is given to us sometimes by our people, who are in touch with the earning capacity of the road. We have been instructed on a number of cases to advance all of our rates, regardless of——

Q. That is, as a whole?

A. Yes, sir.

Q. But that is getting away from parity?

A. No, sir. To disregard the relation—in other words, that we could not maintain that relation and pay expenses.

Q. What do they base that on, their ton mile statistics?

A. I do not know. They come to us in the shape of instructions.

Q. They are going on the aggregate showing of the road, I presume?

A. I don't know what they are going on. As I say, those are instructions that come to us.

Q. You got such instructions as that when they got the injunction from Judge Van De Vanter, didn't you?

A. I was not with the Iron Mountain when they got that injunction. I cannot tell you what instruction they got, but they probably did.

Q. You were on the Kansas City Southern and I suppose
1693 you had instruction there to do it. You were with the Kansas City Southern at that time?

A. At that time, I was.

Q. And you got instructions to lift them a little, didn't you?

A. Yes, sir.

Q. You spoke in illustration of the point you are discussing now, of the change in the Kansas grain rate and how that affected the whole grain world and shook every thing up: would that be a fair illustration to apply to the intrastate rates in Arkansas?

A. I think so. Intrastate rates in Arkansas have practically the same effect. The intrastate rates have practically the same effect in any state. They are right up with the imaginary line between them and the interstate rates. You could not get very far away from it.

Q. Did not the fact of this Kansas grain rate have a material effect on the subject of grain rates, owing to the fact that Kansas is a large grain producing state?

A. Yes, sir, it certainly did have an effect.

Q. If Arkansas had made that change in grain rates it would not have affected the rate fabric as a whole?

A. No, sir, it would not.

Q. Is there any rate that Arkansas would change down there, that it is such a large producer of that it would affect the rate fabric as a whole?

A. The rates as a whole when they change, as they have
1694 changed in this case, affect our rates as a whole. In other words, when you change every state rate you change every interstate rate.

Q. That was not done until you changed them, after you got your injunction?

A. Do you mean the interstate or the state rates?

Q. State rates?

A. Yes, sir.

Q. Don't you know these rates, with very few changes, have been in effect for six years before you got the injunction?

A. Which rates are you speaking of?

Q. I am speaking of the Arkansas state rates.

A. I cannot answer as to rates in effect on the Iron Mountain prior to the commissioners's tariff.

Q. That commissioner's tariff went into effect in 1903?

A. I do not know anything about that, prior to that.

Q. There had been re-issues and revisions, but there were practically no changes. You do not know of any changes in Arkansas prior to the commissioner's rate, that would affect the whole rate fabric, do you?

A. No, sir. But I know the advance in the state rates permitted us to advance the interstate rates. And if for any reason there

should be any reduction of the state rates now in effect, our interstate rates would have to come down just the same.

1695 Q. Let me call your attention to this actual condition: when you advanced the rates in November you made the same advances in the interstate rates: isn't that a fact?

A. Yes, sir.

Q. Those state rates put in by the railroads continued until the first of June, when the court's tariff went into effect, which reduced the rates from what the railroads had had them: did you make any change on your interstate rates because the state rates were reduced?

A. Yes, sir, I think we did. I have not the figures but we did make some changes I am positive.

Q. I would like to say that the commissioners informed me that they have not heard of any application you have made to re-adjust the court's tariff?

A. All right, sir. That may be.

Q. You made several changes last spring, didn't you? Of course, all the roads did.

A. I do not know.

Mr. HILL: If Col. Moore has no objection I will ask Mr. Watson that question.

Mr. WATSON: East of Arkansas the rates were changed.

Q. When?

A. From the Illinois line, affected by the court's tariff.

Q. On coal?

A. Yes, sir.

1696 Q. Were there any other changes made?

A. I do not recall any. Those were the only ones we were interested in.

Q. I think those are the only changes that took place, that on coal.

A. It applied to Brinkley and Forrest City, common points on our road.

Mr. PERKINS: I will say we have been busy for some time past. I have not had that particular branch of it in charge, but the rate clerks have been busy checking out the revised figures on these changes. Whether they have gone into effect or not I do not know. They may not have gone into effect yet.

Q. That went into effect the first of June, didn't it?

A. Yes, sir.

Q. Taking Mr. Watson's statement to be correct, and I am satisfied it is, except on coal from Illinois points there has been no re-adjusting or lowering of interstate rates on account of the lowering of the intrastate rates in Arkansas: isn't that a fact?

A. I am not sure. Probably they have not gone into effect yet.

Q. I wish you would look that up and answer definitely?

A. All right.

Q. You increased your interstate rates whenever you get an increase in the intrastate rates, in order to preserve this parity,

1697 as I understand you?

A. Generally speaking, yes.

Q. You do not increase it to get more revenue?

A. It gives us an opportunity to get more revenue. Naturally the basis and reason for it is to get more revenue.

Q. The higher you raise the state rates the higher you are going to raise the interstate rates, in order to preserve the parity between the two and to protect the trade centers?

A. With a raise in state rates, our interstate rates do advance, yes, as a general rule.

Q. It was in evidence from your auditing department that the increase made on the Iron Mountain when it got the injunction from Judge Van De Vanter was 42%: now how much would you increase your interstate rates to meet that increase of 42% over the interstate rates?

Mr. MOORE: In stating that had you not better state for the months of November and December?

Mr. HILL: They were taken by you.

Mr. MOORE: They were taken as the only period for which information could be obtained.

Mr. HILL: You put that forward as representative. We contended it was 77 and I am stating the lowest basis contended for at that time. I think Judge Trieber said he was satisfied it was more than 50%. I think I stated that accurately because it was put forward as representative you said for two months.

1698 Q. Assuming the increase in state rates was only 42%, how much would you increase the interstate rates to preserve your parity and close relation?

A. I cannot tell you.

Q. It would be up to you to state, wouldn't it? You are the rate man?

A. No, sir, there is not any rate man or any man living who could answer a question like that. You must sit down and figure a rate. You cannot put a hypothetical question like that and answer it.

Q. That is not a hypothetical question but it is the actual fact.

A. Well, a question of that character, and rates cannot be made on such a theory. That is an absolute impossibility.

Q. You cannot preserve that parity and close relation you spoke of?

A. We can preserve a parity but it is not on a percentage relation, no, sir.

Q. It will work out as percentages if you put it in application.

A. I don't know how it will work out. It is not made up on percentages. Naturally anything you establish will work out percentages, but you do not make that on percentages. You could not make them on percentages.

Q. How do you make them?

1699 A. You sit down and work out the rates. Our rates for example, from Memphis following the intrastate rates into Arkansas, are based very largely on the rates used by the Rock Island, they being the short line from Memphis, to Brinkley, Forest City, Little Rock, Benton, Hot Springs, etc. They fix the rate in that direction. The Frisco is the short line from Memphis to points

in eastern Arkansas, Jonesboro, Nettleton, and Hoxie. They fix their rates and we get what we can. They fix the rates and we must meet them or go out of business. Our intermediate rates have to be checked up to correspond with those.

There are a thousand things that enter into the making of rates. I cannot send a tariff man to attend a meeting and tell him how to go about it. I must leave it to his judgment, and to meet those conditions as they come up.

Q. These are actual conditions. I am not putting a theory to you but actual facts.

A. That is a theory so far as rate making is concerned.

Q. I will state it to you and you will see this is not a theory.

The railroads increase their intrastate rates over the commission's tariff. The revenue produced from this increase of rates was 42% for a period of two months, as shown by the accounting department's figures. It was claimed by the state it was about 77% in-
1700 crease. Of course, that increase was not a horizontal increase of 42%; probably some commodities were unchanged and some changed very slightly. But the changes were such that they produced that much increased revenue.

You, as a traffic man, have got to re-adjust your interstate rates to meet those increased state rates: how would you go about it?

A. Just as I explained to you, Judge.

Q. Would you take into consideration that these had been raised 42%—in revenue producing qualities I mean?

A. No, sir, I would not. We would get the advance in the interstate rates which conditions would permit.

You can only set your rates from Memphis, for instance, to Arkansas at a small margin over the west Memphis rate. At any rate, that is the way they are set.

As I say, those rates are set for us by the line having the short line from Memphis. We re-adjust our rates from Cairo and St. Louis and all other defined territories when those Memphis rates are fixed.

Q. Suppose that increase has been half of that, 21 instead of 42.

A. Then the state rates would not, naturally, have increased to the extent—that is, the individual state rates would not have increased to the extent they did. Consequently the interstate rates would not have advanced to the extent they did.

1701 Q. That is what I am trying to get at——

A. In other words, Judge, here is about the proposition: given you on a fair statement of facts, if you raise a rate from West Memphis to say Hope, Arkansas, five cents per hundred pounds your increase in the rate from Memphis would very likely be the same, five cents per hundred pounds.

Now, the increase from St. Louis would be 5¢ per hundred pounds, because there would be that measure. Increase from Pittsburg, Pennsylvania would be five cents per hundred pounds; the increase from Kansas City, Missouri, would be 5¢ per hundred pounds. That is, the rates vary, of course. And there would be no percentage that could be applied.

In other words, an advance in interstate rates as compared with states rates is more on the cents per hundred pounds basis. That is the way it works out.

Q. Wouldn't it be wrong to make any increase in your interstate rates when they are already on a compensatory basis?

A. I do not say they are already on a compensatory basis, such as we would like to get them.

Q. If they produce you ten percent net revenue, with a loss on the intrastate rates, it looks as if they should be on a pretty good producing basis?

A. I do not know what they produce. Nobody knows what they produce.

Mr. HILL (to Mr. Johnson): Have you that dividend statement I called for, Mr. Johnson?

1702 The WITNESS: Mr. Johnson cannot tell what interstate rates produce in dividends on Arkansas business.

Q. That is what I am asking him.

Q. Have you that, Mr. Johnson?

Mr. JOHNSON: Yes.

Mr. HILL:

Q. Mr. Perkins I understand it is in evidence here that the intrastate business is being carried at a loss, and that the railroad is making money as a whole but carrying its intrastate business at a loss: are not the interstate rates, then, necessarily compensatory?

A. Taken as a whole I would say, yes.

Q. If you are making 10% dividend on a very large amount of stock and carrying the burden of heavy losses on your state traffic, would not your interstate rates be extremely profitable?

A. They might and they might not. It depends on what the rates are. We may be getting a very good rate in one section and not so good in another.

Q. I am speaking of your interstate rates as a whole.

A. Interstate rates? Granting what you say is true, I would say that would be substantially correct.

Q. If that is substantially correct, and the change in Arkansas rates is going to change your whole interstate fabric, would it be right to increase those interstate rates?

A. Interstate rates have been increased—as a matter of
1703 fact, some of them were increased before we made the increase in Arkansas. In other words, we physically disregarded that adjustment.

Q. That does not answer my question.

A. I am trying to answer it.

The previous question is read.

A. I answer that by saying we had made an increase in those interstate rates prior to the increases made in the state rates.

Q. You made raises immediately upon increasing your state rates, didn't you?

A. We made some raises. But the principal rates had been made before that.

Q. Before that?
A. Yes, sir? In September.
Q. Then there was not any material re-adjustment of the interstate rates when you made this raise in the state rate?
A. There was a sufficient raise in order to get back to the parity. In other words, we broke the parity to some extent, on instructions from our Management that the revenue was not giving us the returns it should.
Q. And did you reduce these rates to restore the parity on the interstate rates, when you restored the state rates?
A. No, sir, we did not reduce them.
1704 Q. You increased them?
A. Yes, sir, we increased them.

Mr. MOORE: You are speaking now of the Kansas City Southern?

A. I am speaking of the roads generally.

Mr. HILL:

Q. When was it that the Iron Mountain made its increase in interstate rates?
A. The Iron Mountain made its first increase in September.
Q. Was it a general increase?
A. Yes, sir.
Q. What tariff was that?
A. Into what territory?
Q. I am talking about Arkansas.
A. Into Arkansas? I can not give you the number of the tariff off-hand. Perhaps I have a memorandum of it here. (Examining papers) I have not the number of the tariff but I can get that for you.
Q. Was it a general increase on everything?
A. Yes, sir.
Q. How much increase, broadly speaking, was it over pre-existing interstate tariffs?
A. I cannot tell you that.
Q. Was it large or small? You ought to know, generally.
A. I do know generally. It was on the basis of about ten cents first class.
Q. What would that be fourth class?
1705 A. Six cents, I believe.
Q. You mean for all material and all distance, or what do you mean by your ten cents?
A. That was approximately what it amounted to. Without taking the tariff and sitting down and telling you just what changes were made in mileage and rates——
Q. I am not asking you that. I said generally speaking
A. I said generally speaking about 10 cents on first class and from that on down.
Q. That would carry it to what on the fourth class? About six cents?
A. Yes, sir, about six cents.

Q. You mean six cents increase?
A. Yes, sir, six cents increase.
Q. That was done irrespective of any parity with the state rates?
A. Yes, sir.
Q. That is, disregarding the parity?
A. Yes, sir.
Q. When was that made, in 1907?
A. In September, 1908.

1706 FRANK NAY, a witness of lawful age being duly produced, sworn and examined on the part of the complainant, testified as follows:

Direct examination.

By Mr. MOORE:

Q. State your name, residence and occupation?
A. Frank Nay; Chicago, Ill.; Comptroller of the Chicago, Rock Island & Pacific Railroad.
Q. How long have you been connected with the Chicago, Rock Island & Pacific Railway Company?
A. It will be seven years on the first of next April.
Q. In what capacities have you been connected with that company?
A. First as assistant comptroller, then general auditor, and I was recently appointed comptroller.
Q. What experience did you have in connection with railroad accounting prior to the time you went with the Chicago, Rock Island & Pacific?
A. I began service on April 1, 1883 with the Missouri Pacific Railway as clerk on statistics. I worked for that road one year. I was then with the St. Louis, Southwestern Railway 15 years, as clerk on statistics and on freight accounts; as traveling auditor and as chief clerk. I was chief clerk for the last ten years of
1707 those 15 years. I left the St. Louis Southwestern in April, 1889, and took the position of auditor of the Minneapolis & St. Louis and was auditor of that road for four years, leaving that road on April 1, 1903, to go with the Rock Island; and during the last year that I was with the Minneapolis St. Louis I was also auditor of the Iowa Central.
Q. Have you given any thought to the question as to what unit is the basis to be used in dividing operating expenses as between state and interstate traffic?
A. Yes, sir.
Q. Have you prepared a statement setting out your views on that subject?
A. I have.
Q. Does that statement correctly reflect the result of your investigation and thought upon the subject?
A. Yes, sir, it does.

Q. Will you read that statement into the record so as to make it your testimony in this case?

A. Yes, sir. (Witness here reads as follows:)

"Practically all trains carry both intrastate and interstate traffic at the same time; a very large number of passenger cars and of freight cars carrying less than carload freight, carry both intrastate and interstate traffic in the same car; both classes of traffic move over the same rails, roadbed, bridge, etc.; both classes of traffic are supervised by the same officers and employés; the account-
1708 ing work is performed, for both classes of traffic, by clerks without reference to the time expended on either class.

It is a fact that the two classes of traffic are handled simultaneously through all the various departments of railroad service in such a way that an accurate division of the operating expenses between intrastate and interstate traffic, is an accounting proposition which has never been solved, and probably never will be solved.

In very rare cases, such as suburban traffic, lying wholly within one state, where separate tracks, equipment, etc., are used for such suburban service, a part of the expenses can be definitely assigned to such intrastate passenger traffic. Certain small railroads situated wholly within one state may be able to assign certain expenses to intrastate freight traffic, but as a general proposition, it is an absolute impossibility to make any definite and accurate assignment of the operating expenses of railways to intrastate traffic. Therefore, when for any reason, it is desirable or necessary to approximate the operating expenses for intrastate traffic, some basis for such approximation must be selected.

It is possible to determine accurately the number of intrastate tons, intrastate tons one mile, and the amount of intrastate revenue for freight traffic handled. Likewise it is possible to definitely ascertain the number of intrastate passengers, intrastate passengers one
1709 mile, and the amount of intrastate revenue for passenger traffic handled. Therefore, with regard to freight and passenger traffic, it is necessary to select as a basis for approximating operating expenses of intrastate traffic, one of the three classes of information mentioned herein as being definitely ascertainable with regard to the traffic itself.

In determining which one of the three factors, or bases, should be used the one should be selected which will more nearly represent the service performed, bearing in mind all the time that what is being attempted is the segregation of the total operating expenses of every character of freight and passenger traffic into two classes,—intrastate and interstate; that the total amount expended is not increased or decreased, but the aim is to arrive at the best estimate of the proportion of operating expenses to be assigned to the class of traffic under consideration.

First, with reference to passenger traffic.

The passengers, passengers one mile, and passenger revenue, can be definitely ascertained for intrastate and interstate traffic separately, and the proportion of each one of these three factors which is intrastate or interstate, may be positively known.

First taking the passengers; using the number of passengers as the basis, would assume that the cost of transporting a passenger five miles would be the same as the cost of transporting a pas-
1710 senger 500 miles, which is an absurdity, and hence that basis is discarded immediately and search made for something better.

Next, taking the passengers one mile; that factor measures the number of passengers and the distance, so that using that basis assumes that the cost of transporting a passenger 500 miles, is 100 times as much as the cost of transporting a passenger five miles, which is obviously more nearly the fact than to assume that it cost the same to transport a passenger 500 miles as to transport him five miles. However, the cost of running a train is not greatly increased by doubling the number of passengers therein; as, for example, it would cost but little more to haul one hundred passengers a given distance, than to haul 50 passengers the same distance. Hence, it has been the custom of railroads for a great many years to make excursion rates, in order to produce train loads of passengers instead of having the cars partly filled; while the excursion rates are at a low average rate per passenger per mile compared with the maximum rates the remuneration to the railroad company is greater with such low average rates because the cars are filled, thus producing a higher average revenue per train mile and causing only a slight additional cost for hauling a train with all the cars filled over the cost of hauling one with the cars practically empty. Where the traffic is regularly heavy, the rates are frequently lower than where the traffic
1711 is light; as, for example, the average suburban service of the various railroads conducting such service into the city of Chicago, is handled at less than 1¢ per mile, because of the density of the traffic. Therefore, we find that the passenger mile basis is faulty and that the passenger revenue will more nearly correspond to the expenses of the service. If the revenue per passenger per mile was uniform in all cases, the passengers one mile basis would be as good a basis as the passenger revenue in approximating the division of the operating expenses between intrastate and interstate, but since the passenger revenue recognizes certain conditions herein explained which are ignored by the passengers one mile, the best basis known at this time for approximating the operating expenses of intrastate passenger traffic, is the passenger revenue basis.

As to freight traffic, first take the tons transported; this basis considers weight only and to use the tons hauled as a basis for dividing the expenes between intrastate and interstate freight traffic, would assume that the cost of hauling a ton 1000 miles is just 100 times as much as the cost of hauling a ton 10 miles; that the cost of hauling freight in carload lots per ton is the same as the cost of hauling the same kind of freight in less than carload lots; that the cost of hauling a ton of coal is the same as the cost of transporting a ton of showcases; that the cost of hauling a ton of baskets is the same as the cost of hauling a ton of brick; that the cost of hauling a
1712 ton of paper boxes is the same as the cost of hauling a ton of canned meats. That the cost of hauling a ton of chicken

coops is the same as the cost of hauling a ton of cement in sacks; that the cost of hauling a ton of lantern frames is the same as the cost of hauling a ton of gravel; that the cost of hauling a ton of millinery is the same as the cost of hauling a ton of pig iron; that the cost of hauling freight in full train loads where the engine is loaded to its maximum capacity, is the same per ton as the cost of hauling freight in trains where the traffic is light and moves in short trains where the engine is not loaded to nearly half of its capacity. The ton basis is very faulty, and is immediately discarded for something better.

Next, taking up the ton mile basis; this basis modifies one fault of the ton basis because it takes into consideration both the weight and the distance, but it assumes that the cost of hauling a ton 1000 miles is exactly 100 times the cost of hauling a ton ten miles; it is manifest that such is not the case, because there are terminal expenses in connection with every shipment, and the longer the distance carried, the less per mile is the cost of terminal service. Other factors exist which operate to make the cost per mile less on any shipment when the length of haul is increased. This fact is recognized by all rate making bodies, including the various state railroad commissions which make rates; that is to say, none of the commissions, nor any other reputable rate making bodies make the
1713 rate for 300 miles 30 times that for ten miles. Such rate making bodies recognize the fact that the cost per mile decreases as the length of the haul increases, and the rates are made accordingly; therefore, even if we had only the two conditions, weight and distance, to measure, the ton mile basis would be faulty for the reason that it assumes that the cost increases in exact proportion to the increase in the length of the haul and the increase in the weight; then again, the ton mile basis, has all of the objections to the ton basis, with the exception of the one which is modified by taking into consideration the distance; but, as has been stated, the cost does not increase in exact proportion to the increase in the distance; for these reasons, a basis is sought which will give more satisfactory results than either the ton basis or the ton mile basis.

The only basis left, is the revenue basis.

As has heretofore been stated, the revenue basis assumes that the cost of the service increases when the haul increases but not in proportion to the length of the haul; thus, the rate on a given shipment for a haul of 50 miles is not ten times the rate for a haul of five miles, because it is universally recognized that the cost of a haul of fifty miles is not ten times the cost of the haul for five miles. The rates for distances are graduated, and while they are increased for greater distances, the increase in the rate is not in proportion to the distance; hence the revenue basis takes into consideration the
1714 fact that the cost of the service does not increase in proportion to the length of haul, which is ignored by the ton mile basis; in fact, the ton mile basis assumes positively that the cost of transportation does increase in exact proportion to the increase in the length of the haul. Then again, the rate for carloads is less than the rate for less than carload freight, thus recognizing that the

cost of transporting less than carload freight is greater than the cost of transporting carload freight. Likewise, the rate on coal is less than the rate on fruit and vegetables, or live stock, because it is recognized that the cost of transporting fruit and vegetables or live stock, is greater than the cost of transporting coal, and so on, the various illustrations heretofore given about baskets and brick, millinery and pig iron and so on, could be mentioned as illustrating the fallacy of the ton mile basis—or, rather, the superiority of the revenue baiss over the ton mile basis. In portions of the country where the traffic is very great and is moved in full train loads, the rates are usually made lower per ton mile than in portions of the country where the traffic is very light and moves in short trains, with only a few cars in a train. The ton basis, or ton mile basis, would assume that the cost of transporting freight which required the use of special equipment, such as refrigerator cars, stock cars, etc., was the same as for transporting ordinary dead freight not requiring the use of any special equipment, but the rates for
1715 such freight requiring special equipment, are usually higher than those for ordinary dead freight not requiring special facilities and equipment, and therefore the revenue basis recognizes that the cost of transporting such freight requiring special equipment, is greater than the cost of other freight which does not require such special equipment and facilities.

A large number of other conditions which are considered in the rate used in arriving at the revenue, might be mentioned, and thus show the superiority of the revenue basis over either the ton or ton mile basis. It is not claimed that the rates are made on the actual cost of service, but that the cost is consciously or unconsciously given consideration in making rates, and that any rate schedule made by a reputable rate making body will give evidence of the fact that the cost of transporting different kinds of freight is given consideration in making the rates.

An argument is sometimes used to the effect that using the revenue basis is like traveling in a circle, and those who take that position claim that when the revenue of intrastate traffic is doubled, the operating expenses are also doubled, and the end is just the
1716 same as in the beginning. The following illustrations will demonstrate the fallacy of that argument——

First, take for illustration, a small railroad with freight operating revenue of $100,000 and freight operating expenses of $80,000, of which the intrastate freight traffic is $25,000 and the interstate freight traffic $75,000. We have the following statement.

	Intrastate.	Interstate.	Totals.
Operating Frt. revenue....	$25,000	$75,000	$100,000
Operating Frt. expenses dividing the expenses between intrastate and interstate on the revenue basis would be as follows	20,000	60,000	80,000
Net Operating frt. rev...	$5,000	$15,000	$20,000

Suppose that the rates on intrastate freight traffic are increased so as to exactly double the intrastate freight revenue leaving the interstate freight revenue just the same and the operating freight expenses exactly the same,—an impossible condition in actual practice,—but the extreme condition is used in order to emphasize the error of the argument that doubling the intrastate revenue in such a case would double the intrastate expenses.

After doubling the intrastate freight revenue as just mentioned, we would have the following statement.

	Intrastate.	Interstate.	Totals.
Operating frt. revenues....	$50,000	$75,000	$125,000
Operating frt. expenses the intrastate rev. would not be 40% of the total revenue. The operating expenses of $80,000 divided on the revenue basis would now be..	32,000	48,000	80,000
Net Operating frt. rev...	$18,000	$27,000	$45,000

1717 It will be noted that in the first statement, where the intrastate freight revenue is $25,000, the net operating revenue from intrastate freight traffic was only 20% of the total intrastate freight revenue, while in the second statement after intrastate freight revenue had been doubled, the net operating intrastate freight revenue is 36% of the total intrastate freight revenue. If the result had been to increase the operating expenses in the same proportion as the increase in revenue, the net revenue would have been just the same percentage of the gross in each instance.

While it is recognized that it is impossible to accurately divide the operating expenses for freight traffic between intrastate and interstate traffic, it is believed that the revenue basis is preferable to either of the other two available bases, and that an approximation of the operating expenses of intrastate freight traffic, or interstate freight traffic, based on the revenue derived from such traffic as compared with the revenue derived from both kinds of traffic, more nearly approximates the facts than by the use of either the ton or ton mile basis, which are the only other two bases available.

After making the basic approximation of the operating expenses for intrastate freight or passenger traffic, the figures thus arrived at may be increased in the proper proportion to represent the excess of the cost of transporting intrastate traffic over the cost of transporting interstate traffic."

Mr HILL:

1718 Q. You mean by that you make your computations on a straight revenue theory and then add to your state traffic such proportion as you think the state traffic should bear?

A. Yes, sir.

Mr. HILL: The state has approached Mr. Nay heretofore, with a

view of submitting to him some accounting propositions; but learning that the plaintiff is going to use him, we have deferred any consultation with him until he has testified for the plaintiff, and for that reason, by agreement, we defer any cross-examination of Mr. Nay until after he has testified.

C. E. Watson (continued) testified as follows:

1719 Direct-examination.

By Mr. Moore:

Q. Mr. Watson, in the course of your cross-examination you stated in one place that you could handle one car of baskets at the same cost you could handle a car of iron. Do you mean by that it would cost more, literally, to handle just one carload of baskets than it would one carload of iron? Or explain what you mean.

A. The answer was based on the measure we use in fixing freight rates: six cents per hundred pounds.

That is, that the cost of handling a carload of baskets would be more in cents per hundred pounds than the cost of handling a carload of iron, using the same basis.

Q. In discussing in your testimony the relation between the various rates in the standard district tariff No. 2 speaking of lumber you say that the ordinary rating on lumber for 225 miles is 8 cents.

A. The ordinary rating is wrong. It should be the rating on lumber under the standard freight distance tariff for 225 miles is 8 cents.

Q. Then you say: "The ordinary rating for lumber is Class D. The class rate under your tariff is 18 cents."

You were then asked how much it should be and you said "18 cents."

Do you mean to say that the proper rate for transporting
1720 lumber 225 miles would be 18 cents? And if not explain what you did intend to state.

A. That the rate under that tariff on the class D basis would be 18 cents. I did not attempt to determine what the rate should be for lumber for any particular distance other than the revenue that would be derived from handling the traffic if the classifications were used and the tariff rates in the standard distance tariffs were applied.

Mr. Hull: That is what I understood. I did not attempt to be misleading. On the carriage that was a fixed quantity and I was asking how it should be divided.

Mr. Moore: I know you did not so intend but the short answer, just "18 cents" would rather make it appear so, or at least it so impressed me.

Mr. Moore:

Q. You say in referring to these tariffs that you do not think any tariff should be used for determining the cost of service: explain why that is so.

A. Any tariff properly constructed should show a profit. In other words, we should have a profit for conducting transportation. And if it represented the cost of the service there would of course be no profit.

Q. In other words, what you mean is that a tariff properly constructed should represent the cost of something in addition?

A. Yes, sir, in addition to the cost.

Q. You said in your testimony that the accounting department makes up figures on the basis of the average cost per ton per mile or total ton miles: does it make them up on any other basis, such as the *the* cost per car per mile or train per mile?

1721

A. I presume they make such figures on account of the operating department, that would not be used by the traffic department nor would they have any bearing upon our part of the work.

Q. I merely wished to know if they prepare figures on those other two bases?

A. They may do so. I cannot answer the question definitely.

Q. Mr. Watson, the statistics filed in this case by the St. Louis Iron Mountain & Southern Railway show that the average revenue per ton per mile on interstate business is 6.7 mills and on intrastate is 13.4.

Do those figures reflect any light upon the rates that are received for the commodities that are transported?

A. Absolutely none.

Q. Why not?

A. For the reason that the length of haul, the difference between the various commodities, carload, less than carload, ratings, and in fact all of the different factors that go to make up the different traffic is added together and this is the final result, including the revenue per ton per mile on the entire traffic over the entire line. Taking shipments moving 10 miles and shipments moving 2 or three hundred miles; taking a shipment of pianos together with a carload of stone.

1722

Q. That is true of each branch of service, interstate and intrastate?

A. Yes, sir.

Q. It disregards everything except the difference in the length of haul?

A. It disregards everything in connection with the factors that go to make it up.

Q. You were asked on cross examination if you had used any figures as to the cost of transportation of iron or baskets: what effect if any would the nature of those articles have in determining that question, on the face of it: I do not mean accurately but approximately, in a general way?

A. The fact that a carload of baskets would weigh approximately ten thousand pounds and occupy the same space as a carload of iron, that weighs approximately 60,000 lbs. That would be one determining factor.

Re-cross examination.

By Mr. HILL:

Q. Mr. Watson, about this average revenue per ton per mile that you have just explained does not throw any light on the rates, that is, the form in which statistics are made up and put before you when you determine rates, isn't it?

1723 A. That has no relation in determining rates whatever. The statistics you had reference to in your previous question, as I understood it, were the statistics that show the cost per ton per mile.

Q. That is true. But that is made up in the same way, isn't it?

A. Yes, sir, made up in the same way.

Q. Except one is the cost per cent and the other is the revenue per cent, made up on the same unit?

A. Yes, sir, made up on the same unit, using the same figures.

Q. Both made up on averages?

A. Yes, sir.

Q. Both represent a system of averages?

A. Yes, sir, they do.

Q. What you have just said in explanation as you see it of the value of such statistics would equally apply to the cost statistics?

A. I have also stated on previous examinations.

Q. That is as I understood it. But those are the only statistics you had before you as the basis for rate making?

A. As the basis for cost, yes.

Q. Cost in making rates?

A. Yes, sir.

Q. You have just stated in answer to Mr. Moore that no

1724 tariff could be used to show the cost of a service because a tariff should show a profit, a "properly constructed tariff" I believe was your expression: you do not mean that answer is to take the place of your answer yesterday, where you said that the standard distance tariff No. 3 could not be used because it showed inequality and lack of proper relation of one commodity to another, do you?

A. The answer I gave yesterday had no relation to the cost of service, in the same relation in which you now place it.

Q. What did you mean by your answer yesterday?

A. Which particular answer do you have reference to?

Q. In regard to using revenue derived from standard distance tariff No. 3 as a measure of the cost of the intrastate service.

A. May I read the answer I gave yesterday?

Q. I will be glad to have you do it if you can turn to it.

A. (986) "I do not think you can use any tariff to determine the cost of service. I do not think you could use this one (indicating standard distance tariff No. 3) to determine your revenue on a proper basis."

Is that the particular answer you have in mind?

Q. I think so. I want to see the connection in which that was stated (counsel examines record page 986).

Just above that, on the same page, you said:

1725 "I do not believe the standard distance tariff No. 3 was ever represented as a properly constructed tariff. I never heard anybody so represent it."

"Q. Do you think it represents the cost of the service?"

"A. I don't think so, no."

"Q. Nor anywhere near it, I would infer from your answer?"

"A. The evidence from the application of it would indicate not."

I suppose you mean there the evidence of your particular application?

A. The result from the application of it.

Q. That is what I understood you to mean.

"Q. It would not be a very safe measure, then, to use to determine the cost of service in the State of Arkansas."

"A. I do not think you can use any tariff to determine the cost of service, Judge. I don't think you could use this one (indicating) to determine your revenue on a proper basis."

Now, the answer you have made to Mr. Moore about the tariff a few minutes ago was not intended to qualify or take back any part of this statement to which your attention is now called, was it?

A. It is evident we have two understandings about what that statement means. If you will tell me the understanding that this

1726 (indicating Page 987 of record) conveys to you I will indicate very promptly if that is the one I intended to convey.

Q. I think it is very clear, and the only doubt I had was whether your answer to Mr. Moore's question a while ago was intended in any way to take back what you said yesterday.

A. The object of that answer was to make it clear to you that the tariff in itself would not indicate the cost of the service.

Q. You make that very clear in the record there, do you not?

A. That is what I tried to make clear, yes, sir.

Q. You say positively here that it does not represent the cost of the service; and that is your opinion now?

A. Yes, sir.

Q. Do you think an interstate tariff represents the cost of the service?

A. It is not intended to represent the cost of the service.

Q. It is not framed to represent the cost of the service, is it?

A. You would have to define the word "represent" for me, judge. I don't know what you mean by represent, in that case.

Q. Suppose we take another word. The interstate tariff

1727 is not based on the cost of the service—if that will make it plainer to your mind what I am asking.

A. As a general proposition no, the cost of service being only one of the factors.

Q. The cost of service varies materially on different roads, that operate under the same tariff, does it not?

A. I don't know of any roads that operate under one tariff. They operate under a number of tariffs, and that difference in number of tariffs probably carries that point.

Q. That is leading off. Here is what I mean; you would have one

tariff covering a number of roads, wouldn't you? You would enter into a joint tariff with the St. Louis, Iron Mountain & Southern covering certain commodities, and that would cover the rate on your road and on the Iron Mountain and such other roads as desired to enter into it; and that would cover the rate on your road and on the Iron Mountain?

A. To certain points, yes.

Q. There would be a certain difference in the cost on your road and on the Iron Mountain for transporting those commodities, wouldn't there?

A. In the case to which you refer, the tariff is fixed or based upon a condition which does not consider cost of service as a primary factor, that condition being probably either a commercial or a competitive condition.

Q. And those rates are then based upon those conditions
1728 applicable to two or more roads, and ignores the cost of the serivce to be rendered and ignore the difference in the cost of service on one road as compared with the other one?

A. That would be a disparity of line, the difference in the cost of service.

Q. That statement as I have made it is a correct statement?

A. As I understand it, yes.

Q. A good illustration of that point would be your Texas common points, wouldn't it?

A. Yes, sir, that would be a fair illustration of it.

Q. When you speak of the relation of the interstate and the intrastate, I believe you used that term and I know Mr. Perkins did—did you mean the relation of the commercial and trade conditions or did you mean the relative cost between the two?

A. I mean both.

Q. Primarily which?

A. It would be necessary for you to tell me the particular rate to which you refer, in order to answer that question. I cannot give you a general answer because one condition would apply in one case and another condition would apply in another case.

Q. I think you made that statement generally, and for
1729 that reason I cannot give you a specific rate.

I understood they had a close relation between interstate and intrastate rates. I want to know if that close relation refers to the close relation of the cost of handling the traffic, interstate and intrastate; or does it mean close relation in commercial and competitive conditions and freight conditions that enter into interstate and intrastate traffic?

A. The close relation would largely be the trade or commercial conditions and the fact constructed under the state tariff would apply from a border point which would influence *influence* the rates through that border point probably control them.

Q. I believe you stated this morning, it has gone into the record in Mr. Perkins' testimony, that the only change in the interstate tariff to meet the court's tariff on coal from Illinois?

A. I did not hear him make that kind of a statement.

Q. I say, didn't you make such a statement, while Mr. Perkins was testifying?

A. No, sir, you asked me if there had been any change in the rates on coal and I said there had been a change in the rates on coal.

Q. I was asking generally if there had been any change and I understood you to say that had been the only change made, to readjust the interstate rates to the court's tariff?

1730 A. I did not so understand your question.

Q. I intended it that way and thought that was your answer.

A. My understanding of the question was that you had reference only to the coal rate and I answered only as to the coal rate.

Q. I want to bring that out clearly.

What adjustment or re-adjustment of interstate rates has been made to meet the change brought about by the court's rates of June 1, 1908?

A. There has been quite a number of them. I cannot give you that in detail.

Q. Are you certain of that?

A. Yes, sir, I am certain of that.

Q. My information is there has not been any except on the coal. I would be glad to have you look that up and give me such information as you have on that subject of the re-adjustment.

A. Do you want it on actual commodities and the tariff reference and so on?

Q. I think the tariff reference would be sufficient.

A. It would take some checking to get such information as you want and I want to know exactly what you desire.

Q. I want the tariff changes that have been made to meet conditions in the interstate rates, brought about by the court's tariff of June 1st.

1731 A. Do you want it confined to the court's tariff or also the railroad tariff put in subsequent to the court's tariff?

Q. I want to get what changes were made to re-adjust the interstate rates to the court's tariff.

A. I understand you want the changes made in the interstate rates since June 1, 1909.

Q. Yes.

A. That will require a very large statement.

Q. If there are very large changes I want to know it. I do not mean for you to give the detailed statement.

Mr. MOORE: Just make a statement making reference to the tariffs and pages, and the items if they are numbered.

Mr. HILL:

Q. In speaking of your illustration of baskets and iron, would there be any difference in the transportation cost per car of a car loaded with baskets and a car loaded with iron?

A. I should imagine on the per car basis the iron would be the most expensive proposition.

Q. For what reason?

A. For the reason that the iron would weight approximately six times the weight of the baskets. And, necessarily, it would require more power to handle it and there would be more wear and tear on the car and the various and sundry additional cost item.

Q. That is negligible, the cost. What I have in mind—

1732 I expect I used the wrong term—but I meant in transportation; the actual handling of the car.

Mr. MOORE: You mean the terminal service?

Mr. HILL: I mean broader than that. I mean the transportation of the car.

A. In carload traffic the railroad performs no service in connection with the loading and unloading; and therefore the service performed by the transporting company in both cases would be the hauling of the car and the terminal expenses. They would be the same.

Q. The terminal expense would be the same?

A. Yes, sir, the terminal expense would be the same.

Q. And the actual hauling and the labor and the fuel expense would be the same?

A. It would be the same with the exception that in the case of the iron it would require more of the actual tonnage that the engine can handle to take care of the iron than it would to take care of the baskets.

Q. There is no doubt of that. There would be that increased expense due to hauling a heavier load and the increased wear on the track and on the equipment?

A. That is true.

Q. With those expenses, there would be no difference in the cost of the service in handling a car of feathers or a car of iron?

A. There is no doubt about that. I can probably make

1733 that clearer to you, Judge, by making the statement that all our bases are figured in cents per hundred pounds and not per car.

Q. Of course, it would make a difference on that basis.

A. Yes, sir.

Q. That would result in requiring more cars to transport the different way. When you take it on the 100 pound basis?

A. Yes, sir, more cars and more terminal service.

Q. More engine haul?

A. Yes, sir, more engine haul and more dead haul.

Q. That is true. When you take it on the car basis it resolves itself into such difference only as you have heretofore mentioned?

A. Yes, sir.

1734 Cross-examination of C. E. PERKINS continued:

By Mr. HILL:

Q. Mr. Perkins, these interstate distance tariffs you have utilized in making this Exhibit 27 seems to have been effective Sept. 12, 1905: I want to know whether the traffic moves under that tariff

or does it move under the tariffs designating classes and commodities from points to points?

A. It moves almost entirely under that tariff.

Q. Under this distance tariff?

A. Traffic moving locally between Arkansas & Louisiana would move under that tariff.

We have, I believe, three tariffs other than that, as I recall it; one from Little Rock applying to points in Louisiana; one from Pine Bluff to points in Louisiana; and another from Camden. Those are the only other tariffs that apply interstate, that I recall or have any knowledge of.

Q. That is from Arkansas to Louisiana?

A. Yes, sir.

Q. From Missouri into Louisiana does that move under this distance tariff?

A. I am not sure whether that particular distance tariff covers interstate Missouri or not; I would have to look and see.

1735 Q. Look at it.

A. (After examining.) Interstate between stations and Arkansas and Louisiana on the Iron Mountain, no, sir, that would not cover. We have another one, though.

Q. Shipments from St. Louis to Louisiana or St. Louis to Texas would not be controlled by this distance tariff?

A. From St. Louis?

Q. Yes.

A. No, sir.

Q. Points from Kansas and Oklahoma into Louisiana or Texas, moving through Arkansas, would not be governed by this?

A. I have not attempted to show that they would. In other words, the statement Exhibit 37 does not cover any such example as that.

Q. There are such interstate rates as I have mentioned, are there not?

A. I am not sure whether we have rates of that character. I presume we have.

Q. This applies only to the local movement between Arkansas & Missouri where some other tariff does not apply?

A. It covers a large amount of our rates. That is, with one or two exceptions—with one exception that I know of, it covers all of our interstate rates between points in Missouri other than St. Louis. Of course, we have a terminal tariff from St. Louis

1736 and a terminal tariff from Springfield.

Q. I thought you said this tariff does not apply from Missouri?

A. That particular tariff does not, no, sir. But the rates represented in this statement do, we have an interstate tariff applying between Missouri and Arkansas.

Q. Is that on the same mileage scale as this?

A. Yes, sir. It is shown in the statement (exhibit 37).

Q. Is it the same?

A. I do not know that it is exactly the same (after examining

paper). No, sir, it is not. We base it on our interstate tariff between Arkansas and Missouri.

Q. This applies only to the interstate tariff between Arkansas and Louisiana

A. That is correct.

Q. These movements indicated in your exhibit 37 that would move under this distance tariff are comparatively a small part of your interstate traffic, aren't they?

A. Taking our interstate traffic as a whole, yes.

Q. About what percentage of your interstate traffic, as a whole, moves under these distance rates?

A. I have not any idea.

Q. I will call your attention to the fact that your exhibits in this case show that your trans-state traffic is 51% of the whole: none of that would move under this, (indicating exhibit), would it?

A. No, sir.

1737 Q. Then that leaves 49% to be reached by other tariffs: of that 49% how much would move under this distance tariff?

A. I could not tell you. I have not any figures or any information.

I might say that in making these statements, it is a rate comparison. I did not attempt to go into the statistics to find out how much business moved under each tariff.

Q. I am trying to do that now. I am trying to find out how much value your exhibits has?

A. It is a comparison of rates.

Q. I understand that, but rates amount to nothing unless freight moved under them. And you commenced your statement as to this exhibit by stating that it represented commodities which had large movements.

A. I stated I had taken a list of the commodities handed me by the accounting department, which represented the movement in Arkansas.

Now to make a comparison of our state rates in other states with our interstate rates between Arkansas & the bordering states, I gave the rates on those commodities for the interstate haul.

Q. If there is no considerable traffic moving under such rates as that, it has little significance as a comparison, has it?

A. It has a certain significance, because it designates the

1738 difference in the rates as published in certain states and on interstate traffic.

The question whether the business moves or not of course was not taken into consideration. It may have moved in large quantities or it may have moved in small quantities, for aught I know. I do not know.

Q. You know a large portion of the interstate traffic of Arkansas, excluding trans-state traffic, moves out of St. Louis and Memphis, do you not?

A. No, sir. I know there is a considerable quantity but there is quite interstate movement in other directions.

Q. I am not disputing that: but isn't there a large interstate movement out of Memphis and St. Louis into Arkansas?

A. There is, yes; there is considerable movement.

Q. You have already admitted you would have to exclude from this schedule the trans-state movement which is 51%: you would have to exclude the St. Louis, Memphis & Fort Smith interstate movements, wouldn't you?

A. Yes, they would not be covered by these rates.

Q. You would have to exclude the New Orleans movement, wouldn't you?

A. Yes, sir.

Q. Then the Pine Bluff and Camden tariffs that you have heretofore referred to, would have to be excluded, too?

A. Business moving under them would not move under the
1739 rates in exhibit 37, no, sir.

Q. None of the lumber moving in Arkansas or Louisiana and the northwest would move under these rates, would it?

A Yes, sir.

Q. You say the lumber would?

A. Yes, sir.

Q. Where from?

A. If there is any lumber moving from Arkansas to Louisiana or Louisiana to Arkansas, it would move under these rates.

Q. To the northwest?

A. I did not say to the northwest. We have not any figures that would indicate any such thing in that statement Exhibit 37.

Q. You have here interstate lumber rate in your statement?

A. Yes, but I have not anything that would cover a movement from Louisiana to the northwest.

Q. You have a 12 cent lumber rate covering 200 miles.

A. Yes, sir.

Q. What movement does that represent?

A. You would have to tell me where it is from?

Q. You will have to tell me.

A. I mean on the statement.

Q. 200 miles Arkansas and Lousiana.

A. That would apply between a given point in Arkansas
1740 and a given point in Louisiana which were 200 miles apart.

Q. Now take your Arkansas and Missouri tariff, where would that apply?

A. That would apply from a point in Arkansas to a point in Louisiana or from a point in Louisiana to a point in Arkansas.

Q. What about that 18¢ blanket rate from South Arkansas to St. Louis?

A. We are not talking about St. Louis traffic. There are lots of other stations in Missouri besides St. Louis.

Q. St. Louis is in Missouri, isn't it?

A. Yes, sir. St. Louis is in Missouri.

Q. You have this Arkansas and Missouri?

A. Yes, sir.

Q. And you will have to except from that St. Louis, will you not?

A. Yes, sir.

Mr. MOORE: What is the mileage from St. Louis to Little Rock?
A. 345 miles.

Mr. HILL:

Q. You say "from Arkansas." You would get a movement on the face of it from North Arkansas to St. Louis.
Mr. MOORE: What is the northern boundary of the lumber rate?
A. The Arkansas River.

1741 Mr. HILL:

Q. Now this 49% of the interstate traffic it could possibly move under this distance tariff, what is your judgment of the percentage that actually moves under this distance tariff shown on your exhibit 37.
A. I have absolutely no idea. I could not even make a guess at it.
Q. You have taken a comparison of rates——
A. A comparison of rates only.
Q. Without any knowledge of the extent of the movement under them?
A. Yes, sir.
Q. Do you regard that as fairly representing the conditions of the traffic?
A. I regard that as fairly representing rates adjustments yes.
Q. I want to call your attention to the statement in this distance tariff on page 2:
"Where the use of continuous mileage makes a lower rate than authorized by the Arkansas Commission for *for* two or three lines, the Arkansas Commission basis will be observed as the minimum in making rates between Arkansas and Louisiana points."
A. Yes. In other words we would not go lower. Those rates would apply, but we would not in any case go lower than the Arkansas distance rates.
Q. Don't they authorize it?
A. No, sir. We simply say we will not make a lower rate than that.

1742 Q. The effect of that would be this: if the Arkansas Commission rate for two or three lines was lower than this interstate distance rate, you would take the Arkansas Commission rate?
A. No, sir, just the other way. If you will read it again, Judge, you will see that.
In other words, if the rates named in that tariff should happen to produce a lower rate than the Arkansas rate, the Arkansas rate would be the lowest rate we would adopt.
Q. I thought that was the way I stated my question?
A. No, sir, you said if the Arkansas rate was lower we would take that rate.
Mr. MOORE: If that rate were lower you would take the Arkansas rate?
A. Yes, sir.

Mr. HILL:

Q. You have explained that there, whether I said it right or wrong?

A. Yes, sir, I have explained it.

Q. What effect would that have upon this schedule of rates you have put in?

A. None. It should have none. The schedule of rates was taken from that tariff and if that note was in effect at the time, during this particular period, the rate clerk would take that note into consideration—in other words, the one effect it could have would
1743 be to perhaps bring the interstate rate up to the Arkansas State rate.

Now, I do not think there are any instances in here where the interstate rates between Arkansas & Louisiana are lower than the Arkansas state rates.

Q. Mr. Perkins, haven't you taken a one line rate to make this statement on?

A. Yes, certainly. We are making the Iron Mountain rates. If I had not, I would have had to take a joint line in Arkansas.

1744 Q. Mr. Perkins, let us now take the map; Have you examined the zone grain rates that I submitted to you yesterday?

A. Yes, sir.

Q. This is the rate on corn and articles taking the corn rate; and wheat and articles taking the same rate, of which there is a map made showing zones A and B and an explanation attached to the map: you have examined those?

A. I have examined the map, yes.

Q. And the explanation attached to it?

A. Yes, sir.

Q. Did you find it correct?

A. I did.

The map referred to is marked "C. E. Perkins Exhibit 38."
Said exhibit is in the words and figures following to-wit:
For Exhibit 38, see Volume 8, page 5380.

1745 Q. The next of these zones or group rates is on lumber from Louisiana and Arkansas to Northwestern points: have you examined the map and the statement attached to the map?

A. I have examined the map. I have not personally examined the statement.

Q. Did you find the map accurate?

A. It is accurate in a way; that is, all points within the zones marked "B" take a blanket or zone rate to the northwest. There are points in that zone, however, which are not on the Iron Mountain road. But they would take the zone rates.

Q. And they are shown by the Iron Mountain tariff to take the zone rates?

A. Yes, sir, they are shown in the Iron Mountain tariffs.

Q. That I believe you will find explained in the statement attached to the map, if you will examine that.

A. (After examine- statement.) These statements go on to give information which is not tariff information and I do not know but I think Col. Moore ought to say as to what I will agree to and what

I will not agree to. This statement goes on to speak of the expense of Kansas City terminals and so on.

Q. I stated yesterday that I did not expect you to agree to any comments in those statements.

I merely intend to ask you if the statements of facts therein
1746 contained are correct?

A. So far as the rates named from point to point, I have had that checked.

Q. I just want to ask you if those are correct'

A. Yes, sir. I have had those checked.

Q. I merely wanted you to state the facts that this map is correctly drawn, covering your exhibit 37, and that it covers the territory named and the rates named in the statement attached to it are correctly drawn from your tariff.

—. That is correct.

The exhibit referred to is marked "C. E. Perkins Exhibit 39."
Said exhibit is in the words and figures following to-wit:
For Exhibit 39, see Volume 8, page 5382.

1747 Q. Here is a map showing the group or zone rates on lumber from Arkansas and Louisiana points to St. Louis and Carondelet, Missouri and Thebes and Cairo, Illinois; have you examined this map and the statement attached to it?

A. Yes, sir, and with the corrections made in pencil I find it to be correct.

Q. The corrections you call attention to has already been made on the map?

A. Yes, sir.

Q. And is the statement attached too correct?

A. Except that there are 29 commodities stated herein and I counted the commodities named on the tariff and find there are 33.

The map referred to is marked "C. E. Perkins Exhibit 40."
Said exhibit is in the words and figures following to-wit:
For Exhibit 40, see Volume 8, page 5384.

1748 Q. Here is a map representing the zone rates on cotton seed products: have you examined that?

A. Yes, sir.

Q. You have attached to this map what you say is an explanation?

A. Yes, sir.

Q. Which reads as follows: "Attached map representing rate and adjustment on cotton seed meal is correct except that portion of the Missouri Pacific line Shook to Kiowa, Kansas, should be excluded from the territory marked 'Zone A:'" is that correct?

A. Yes, sir.

Q. Since you have made that explanation Mr. Hamilton has excluded that territory from the zone marked A on the map?

A. Yes, sir.

Q. Have you verified the rates and distances that are mentioned in the statement attached to the map, explanatory of it?

A. Yes, sir.

Q. Are they correct?

A. They are.

The map referred to is marked "C. E. Perkins Exhibit 41."
Said exhibit is in the words and figures following to-wit:
For Exhibit 41, see Volume 8, page 5386.

1749 Q. Have you examined the map covering Texas common points and rates covering points to the common point territory mentioned in the statement attached to the map?

A. Yes, sir.

Q. Have you examined the statement with reference to the rates and distance shown on the statement in explanation of the map and have you found them correct?

A. So far as the map is concerned it is now substantially correct and the actual rates and distances shown are correct.

The map referred to is marked "C. E. Perkins Exhibit 42."
Said exhibit is in the words and figures following to-wit:
For Exhibit 42 see Volume 8, page 5388.

1750 Mr. HILL: I hand Mr. Perkins a map showing blanket rates on Cotton, with a statement attached thereto.

Mr. Perkins has not had an opportunity to examine this map to verify the statement. By agreement it is put in as Exhibit 43 subject to proper proof of its correctness hereafter.

The paper referred to is marked "C. E. Perkins Exhibit 43."
Said exhibit is in the words and figures following to-wit:
For Exhibit 43, see Volume 8, page 5390.

1751 Q. Are you familiar with the freight rates on citrus fruit from California east?

A. No, sir, I am not.

Q. You don't know the belt or zone of the citrus fruits from California and the rate it carries east?

A. I do not.

Q. You do not know the rate that your road hauls citrus fruit from California on?

A. No, sir.

Q. Do you know the blanket or zone, without knowing the actual rate itself?

A. No, sir, I do not know that. That is something I have never come in contact with as yet, Judge.

Q. Have you anyone especially in charge of that?

A. Yes, sir we have a man who has charge of the transcontinental business.

Q. I have a statement here of what we understand to be the facts about that. Would you mind having your man in charge of that verify this statement?

Mr MOORE: I object to that.

Mr. HILL: If you object we will withdraw it.

Q. Now, Mr. Perkins, coming back to this question of cost of service in fixing rates, when you fix a rate do you bear in mind two elements, one the cost of the service and the other the profit to be made on that rate?

A. No, sir. I cannot say we do. When we are fixing
1752. any particular rate we cannot bear in mind the cost, because we do not know the cost.

Q. You cannot bear in mind the profit, because you do not know the profit?

A. No, sir.

Q. Who is the head of your rate making, in your railroad, at the present time?

A. I am.

Q. I understood from you yesterday that Mr. Finnen was your superior officer and that Mr. Johnson was his superior officer?

A. Yes, sir, but we do not call those officers rate makers. They are my superior officers, but I am in charge of that department.

Q. Mr. Johnson is the head of your department?

A. Mr. Johnson is the head of the traffic department, if that is what you want to know.

Q. He is an experienced man in traffic and rates, is he not?

A. He is so considered, yes.

Q. I want to submit to you the statement of Mr. Johnson which hereafter I will put in evidence, and ask you from your knowledge of rate making in the Iron Mountain road if this is a correct statement of the way rates are made?

Mr. Moore. We object to that statement of Mr. Johnson's views. If counsel wish to propound as a question to the witness
1753. facts contained in that statement for the purpose of getting his views, we have no objection to it.

Mr. Hill. That is exactly what I wanted to do.

Mr. Moore. You put it in as a statement of Mr. Johnson, and I object to that because his statements are not binding here except when propounded to him on the witness stand.

Mr. Hill. When I come to put in my evidence I state here and now that I intend to put that in evidence.

I asked Mr. Perkins as a matter of fact whether the statement made by Mr. Johnson as to the making of rates is correct, the way it is done, is the essential fact I am trying to develop.

Mr. Moore. I have not any objection to counsel making a statement here and asking the witness if that is a correct statement of the way rates are made. But I do not understand you are intending now to put in Mr. Johnson's statement, because I will most certainly object to that. His statement in one case certainly cannot be used in this case.

The Master. Is his statement in evidence in this case?

Mr. Hill. No, sir, in another case.

The Master. I am inclined to think Mr. Moore is correct.

If you will read that into the record and then ask Mr. Per-
1754. kins about it.

Mr. Hill. That is exactly what my question is. I was going to hand this paper to Mr. Perkins and let him read it and then read that into the record as a correct statement of the way rates are made in his department.

Mr. MOORE: I object to that. If you want to ask him the question, ask him. If you want to read that statement and make your question by asking if that statement is correct, I cannot object to that.

The MASTER: I think that is the proper way.

Mr. HILL: I will read you this:

"Q. Mr. Johnson, in your experience as a traffic and freight man have you studied the cost of the movement of the different classes of freight, and the different kinds of tonnage, in determining what would be a reasonable rate in the handling of different classes of traffic? And are not railroad rates based on the assumption that they make a fair return on the cost of the movement of that freight?"

Mr. MOORE: I object to the reading into the record of that question.

Mr. HILL: I am just following your own suggestion.

Mr. MOORE: No, my suggestion was to read the facts, not as a question to Mr. Johnson.

Mr. MOORE: That is the interrogatory which Mr. Hill is propounding to this witness and I suppose he has a righ- to propound it in such shape as he wishes and ask him what part he considers correct.

Mr. HILL: I will continue to read as follows:

"A. It is very difficult to determine the cost of moving
1755 any particular commodity any particular distance. In fact, it might be said to be impossible to do it. We can only figure in a very general way. We know about what it costs to move a ton of freight one mile, at the end of a year and we know what we have received for moving a ton one mile.

Now, that is on the business as a whole, which of course is made up of hundreds of thousands of different shipments. It is impossible to know the exact cost of moving one ton of any particular class of freight for any particular distance.

"Q. But in making the rates, is the general average of cost of moving a commodity taken into consideration in fixing a rate that will be compensatory in the moving of any particular commodity? I refer to the general average of cost you have spoken of, as shown by your records at the end of the year.

"A. No, sir, rates are not made that way. By experience we have some knowledge of about what we ought to have for the service in question.

Rate making, as a general proposition, is largely a guess; and the railroad people claim that by experience they are very much better able to guess correctly than the other fellow.

There are so very many factors entering into the cost that it is impossible to determine the cost of moving the different classes of freight. And we can only determine in a general way, from experience, about what is fair and compensatory."

Is that a correct statement of rate making as made in your department of the Iron Mountain road?

Mr. MOORE: You are asking that as a statement made by Mr. Johnson. Is that a statement made by him at a banquet or in a case.

Mr. HILL: Do you want to know the case.

Mr. MOORE: Yes.

Mr. HILL: It was made in the case of the Chapman and
1756 Dewey Lumber Co. vs. the Jonesboro, Lake City and Eastern Railroad, in the Circuit Court of Craighead County, in the Jonesboro District of Arkansas, in which your partner, Mr. William B. Smith, appeared as one of the parties.

A. I cannot say that I would agree entirely with that statement. That is, particularly in the terms in which it is expressed.

I have stated that I agree with the statement made that it is impossible for us to know what the cost is to move any one particular commodity for any given distance.

There are a great many factors, however, entering into the making of freight rates which would keep it entirely out of a guessing competition. We base freight rates to some extent it is true on our judgment, a judgment which we have received in years of experience along those lines.

While there is no hard and fast line, no scientific rule which can be laid down for making a freight rate exactly, where there are no two freight rates that will be the same, even on the same commodity, for the same distance, because there will probably be different elements entering into that particular movement; all of these matters have to be considered and naturally our judgment comes into play to a very large extent.

But, as I stated, there are a great many factors which we do con-
sider in making our freight rates and which do recur back
1757 to the cost of handling the business.

Q. What about Mr. Johnson's statement there "It is impossible to know the exact cost of moving any one ton of any particular class of freight for any particular distance."

Is that a correct statement?

Mr. MOORE: That is objected to.

Mr. HILL:

Q. Or if you will prefer it I will ask him if that is a fact.

A. That is correct, I understand.

Mr. HILL:

Q. Take this statement and I will ask you if this is a fact:

"It is very difficult to determine the cost of moving any particular commodity any particular distance. In fact, it may be said to be impossible to do it."

A. Accurately, yes.

Q. This is the statement I believe you say is not a fact:

"Rate making as a general proposition, is largely a guess. Railroad people claim by experience that they are much better able to guess correctly than the other fellow."

Is that right?

A. That is the particular statement I do not entirely agree with, or do not agree with, in those particular terms.

I think I know what Mr. Johnson had in mind in making that statement. That is, that in making freight rates we use our judgment to a very large extent. Our judgment, owing to our experience in the matter, is better than that of someone who has had no experience or no judgment.

1758 Q. If I would substitute the word "judgment" instead of the word "guess" that statement would then meet your approval, would it?

A. Read it again please?

Counsel here reads the statement referred to.

A. No, sir, I would not agree with it then. You have to take out the word "largely" to suit me. If you will substitute "to some extent" for "largely" I think I could agree with that statement.

Q. That would put you and Mr. Johnson pretty far apart, wouldn't it?

A. It probably would, on that particular statement. But the wording of that can be construed different ways. That is, you can put one extreme on it and I may put the other extreme on it.

Mr. MOORE: I move to exclude all of the statement- counsel has introduced in connection with Mr. Johnson, on the ground that they are introduced here for the purpose of bringing into the record the facts that two railroad officials differ as to the question to which the testimony relates, and it is not competent to do that.

The only competent way to bring in to this record the statement of Mr. Johnson, is to put him on the stand as a witness, as the statement made by him as a witness in another case is not competent evidence in this case, either to prove the facts stated by him

1759 or to prove that he entertains different views from the views of the witness now on the stand.

The MASTER: I will let the record stand as it is and let that go in. I would not undertake the responsibility of ruling that testimony out.

1760 *Stipulation of Counsel as to Value of the Property.*

It is agreed by counsel for defendant in these cases that the assessments introduced in evidence at the hearing of applications for injunctions in these cases before Judge Van Devanter, and which are set out in the exhibits filed by the accounting officials of the respective complainants in the evidence taken before the Master in these cases, were made upon the basis of 50% of the value of the property and that said assessments, multiplied by two, respectively, represent the value of the property, for the purpose of this case. Counsel for complainants have also introduced the assessments made by the Tax Commission of the state of Arkansas of the property of each of the complainants in the year 1909; which assessments are set out in the respective statements filed as exhibits in these cases by the accounting officials of each of the complainants.

Counsel for defendant objects to the competency and admissability of said statements, as to the assessments made in the year 1909.

But if said statements are admitted as competent, it is then agreed that they were made on the basis of 50% of the value of the property; and that in order to represent the full value they should be multiplied by two.

It is further understood that the defendants are not concluded by this agreement to object to any consideration of any items included in the assessments which the defendants claim should not be
1761 included therein, which has heretofore been brought out in evidence or which may hereafter be brought out in evidence.

NOTE.—The objection of the complainants to portions of statement attached to the map numbered as Exhibits 38 to 43 inclusive, are sustained as to certain matters which are stricken out of said statements by counsel for defendant; leaving certain other statement therein of affirmative facts, to which complainants also object but as to which the objection is overruled.

The witness C. E. Perkins on cross examination admits that the facts relating in the statements attached to the said map are true.

Complainants object, however, upon the ground that the statement attached to the maps are not the proper way to introduce independent facts of that character into the record.

NOTE.—It is agreed that the taking of testimony by the complainants may continue until the 29th day of January, 1910, upon which date it will terminate.

1762 F. P. JOHNSON recalled:

At the request of counsel for defendants Mr. F. P. Johnson files an exhibit which is an analysis of the mail earnings for the six months ending Dec. 31, 1907.

Said exhibit is marked "F. P. Johnson Exhibit 44."

Said exhibit is in the words and figures following to-wit:

For Exhibit 44, see Volume 8, page 5392.

1763 Cross-examination by FRANK NAY:

By Mr. HILL:

Q. Mr. Nay, as I understand the substance of your testimony, it is you prefer as more nearly accurate the revenue theory than the other two theories you mentioned in your testimony?

A. Yes, sir.

Q. You do not mean to state that the revenue theory would bring exact results, do you?

A. No, sir. I think I stated in the opening that to bring an exact division between state and interstate expenses was an accounting impossibility, that we had not yet found a solution of.

Q. Necessarily the revenue basis is dependent upon how nearly the rate is based upon the cost of the service, isn't it?

A. Yes, sir.

1764 Q. If the rate does not reflect the cost of the service, then this as a basis for ascertaining the respective expenses, intrastate and interstate, would not be of value?

A. If that was true. If the rate did not reflect at all the cost of service, it, of course, would be of no value.

Q. Its value is entirely dependent upon how nearly the rate reflects the cost of service?

A. Yes, sir.

Q. Have you had any experience in rate making?

A. No, sir.

Q. That is outside of your experience in railroad matters?

A. Yes, sir.

Q. Your knowledge upon that is largely theoretical, I assume?

A. Well, it is based on the knowledge of classifications and tariffs that have been prepared by other people.

Q. That is what I mean. It is not first hand knowledge?

A. No, sir.

Q. It is a knowledge which has come to you from your experience in the auditing department of railroads and so far as you are concerned is theoretical: isn't that true?

A. You mean the knowledge of?

Q. Of ratemaking.

A. Yes, sir, of ratemaking.

Q. Mr. Nay, have you given consideration to Exhibit 23
1765 this case, which is the calculation made by Mr. Kimbell. I called your attention to it at St. Louis. I don't know whether you gave it any close examination or not. I wish you would, if you have not already done so.

A. I have not, any more than I did at that time when we were there together.

Q. Did you examine it enough to answer questions as to its correctness? If you have not just look it over now.

A. (After examining paper.) I have examined it now.

Q. Does that exhibit correctly work out the effect of the increase that is therein indicated on the earnings and on the expenses?

A. I have examined the figures so far as they relate to the division on a straight revenue basis but I have not examined these results under the heading "100% extra cost," but those on the straight revenue basis, the calculations appear to be correct.

Q. That is really the same illustration as you used in your direct examination, isn't it?

A. Practically the same.

Q. Just using different figures to illustrate the point?

A. Yes, sir.

Q. You stated in your testimony on Page 1128 "An argument is sometimes used to the effect that using the revenue basis is like traveling in a circle, and those who take that position claim that when the revenue of intrastate traffic is doubled, the operating expenses are doubled, and the end is just the same as in the beginning."
1766 Then you gave an illustration to demonstrate the fallacy of that argument.

I will call your attention to the fact that the effect of the revenue theory as we contend for it, is not as you assume in your testimony, but is as shown in that illustration: isn't that a fact?

A. No, sir, I think both illustrations prove the same thing. That is, that doubling the revenue or adding one third of the revenue, does not double the expenses and does not add one-third to the expense of intrastate business.

Q. You don't quite catch my point: what I am calling your attention to is this:

The illustration you made was to meet an argument which was not being advanced by us, as you will see from our illustration. So your argument was shooting at someone else rather than the state, in this particular case: isn't that a fact?

A. Perhaps that is true. I have heard that argument used on several occasions and I ask your pardon. I did not want to intimate you were taking that ground, but I had not heard the testimony in the case. I did not have the advantage of hearing the previous testimony.

Q. You see from that we are making our calculations on the revenue basis, the same as you are?

A. Yes, sir.

Q. So this argument will lose its force as applied to the
1767 state of Arkansas in this particular case, whatever it may be to others, who are using it.

Mr. Nay, I wish you would turn to Mr. McPherson's Exhibit 30. Have you ever examined that?

A. No, sir.

Q. I will call your attention to that exhibit and ask you to look at the line which he has there representing freight earnings per ton per mile. It shows a considerable fall and also fluctuations as you will see by examining it.

A. (After examining Exhibit:) Yes, sir.

Q. You can see there it has fallen as low as 83 in 1906?

A. Yes, sir.

Q. And in 1907 at what does it stand?

A. 1907 it is 85, apparently strong 85, nearly 86.

Q. There has been some rise during 1907, I believe?

A. Yes, sir.

Q. It was in evidence in the hearing for a modification of the injunction in this case last spring, that during the period covered by the last four or five years on that chart, there was no material change in the intrastate rates so far as revenue was concerned. If that were true it would necessarily follow, wouldn't it, that the fluctuation or lowering in these freight earnings shown on that line you are now examining would be due to the lowering and changing of the interstate rates, wouldn't it?

A. I should not say it would necessarily be due as to
1768 that.

Q. Why wouldn't it?

A. Because the average revenue per ton per mile is not an absolute indication of the rates charged. For example, in one year there might have been say 50% of the traffic was coal or lumber, which

carried a low average rate per ton per mile; and in another year 30 to 35% of those so-called low class commodities; and that would cause fluctuations in the average rate per ton per mile.

Q. I see that is true; as a matter of fact in the last few years there has been no change in the movement of the classes of freight in Arkansas?

A. I do not know, and especially on the St. Louis Iron Mountain & Southern I would not know.

Q. Except for those differences you have indicated those fluctuations would naturally follow from changes in the interstate rates, wouldn't they, assuming the state rates were fairly level?

A. Yes, except for those indications—but I do not want to convey the idea that those indications are minor ones. As for example, I happen to know that with the Chicago and Eastern, Illinois Railroad, during the stringent period when business was dull, and their average revenue per ton per mile was higher than it was when their business was good, due to a falling off of the coal business.

Nearly 80% of their tonnage is lumber and coal, practi-
1769 cally all coal. That has impressed this point upon my mind in a way that makes me feel altogether that with other similar experiences, the change in the classes of freight may make a very marked change in the average rate per ton per mile, and the rates remain the same.

Q. That lowering and fluctuation in the freight earnings may represent either of two conditions, or probably both, the fluctuation in the interstate rates and the fluctuation in the classes of traffic carried.

A. Yes, sir, it may be either, as you say; or both; or it may be due to the change in the character of the state freight.

Q. I am assuming in my question to you, predicated upon this evidence, that there has been no material change so far as revenue producing rates are concerned in those years.

Mr. MOORE: You misunderstood him.

A. I understood your first question to refer to rates.

Mr. HILL:

Q. That is true.

A. If the character of the state freight had been different in the different years it would help along the fluctuations.

Q. I thought you said rate instead of freight. I see your point.

You notice a much greater rise in the cost of the various
1770 items of cost indicated on that chart, than there is a lowering of the freight earnings, don't you?

A. Yes, sir, that is of freight revenue per ton per mile.

Q. What effect would that have upon the use of the revenue as a measure of ascertaining the cost, interstate and intrastate, and is that marked difference that is shown in the chart before you?

A. I do not think that would have a serious effect. Of course, as I have said, the revenue basis is not an exact one, but the character of freight changes from month to month; and, of course, the expenses change with the character of the freight; and in that way I

think the revenue basis, whether it is lower or higher, more nearly measures the expense than either one of the other two I have mentioned.

The fact that the average rates are lower, would not necessarily condemn the revenue basis, because it might be due to lower rates or it might be due to a difference in the classes of freight handled; and, furthermore, while I have had no experience in actual rate making, yet every rate that is made is immediately furnished to the accounting department, and it is the duty of the accounting department to see that the revenue is collected, according to those rates. And as a matter of fact we know, as a rule when state rates are lower the interstate rates are also lower; and the reverse may be stated also, as a matter of common knowledge. That being the case, the two classes of revenue are somewhat similarly affected.

1771 Q. That is on the assumption there is a relation between the lowering or raising of state rates to the interstate. If that proper proportion were not kept between them, then the value of the revenue basis would be destroyed, wouldn't it?

A. No, sir, it might be somewhat impaired but certainly not destroyed.

Q. It would be very considerably impaired, wouldn't it, Mr. Nay, if both rates were changed and no change in the rate proportion to each other?

A. Well, not necessarily. It might have been they were not in proper proportions in the first place. That, of course, involves the making of rates.

Q. Of course you would have to assume at some time a proper proportion between them.

A. But the assumption is, as stated in my direct examination, that the rate making bodies while they do not take the cost of service as an exact basis, yet every schedule of rates they produce will give evidence on its face, practically every schedule, that the cost of the service is considered.

Q. Right upon that point, I want to call your attention to a summary which I have drawn here of what I understand to be the sum of the evidence in this case, upon this relation of the intrastate and the interstate rates.

It is in evidence that after the injunctions were obtained in this case the Iron Mountain and the railroads obtaining an in-

1772 junction, united in increasing the intrastate rates. That advance produced an estimated increase in revenue of 42%, as shown by the Iron Mountain, for the months of November and December, 1908.

It was claimed by the state that the increased revenue produced was about 77%.

Mr. Flippen, the Freight Traffic Manager of the Iron Mountain has testified that when the state rates were thus increased, as soon as the necessary work could be done and the statutory time observed, the interstate rates were advanced, in order that they might bear their proper relation to the state adjustment, and as we term it

(this is quoting from Mr. Flippen's testimony) "share their part of the transportation burdens."

By "interstate rates" he was referring to those rates having destination and origin in the state, and not to trans-state rates.

Mr. Flippen further testified that the measure of advance in interstate rates was not the same percentage of advance in state rates because of the fact that the adjustment relatively was already much higher and in explanation thereof he said:

"The rates within the state of Arkansas under the Commission's tariff were inordinately low and, therefore, when we came to the point of advancing the interstate rates with relation to the state rates we did not have to observe the same percentage."

He said the average increase of said interstate rates to readjust the relation, increased the state rates therefrom 10 to 15%.

1773 Now, assume for the purpose of this question the correctness of Mr. Flippen's statement above quoted, and that the railroads made an average increase of rates which produced at least 42% increased revenue, and, to observe the proper relation between state and interstate rates, increased the interstate rates having origin and destination in Arkansas ten to fifteen per cent on the average, but did not change the trans-state rates. Then were the revenues produced from the intrastate rates and interstate rates which existed before these advances were made, in such relation to each other that the revenue produced from them would be proper factors or accurate factors in determining the cost of operation, respectively, of state and interstate?

A. Well, of course, Judge Hill, in one case the 42% increase is in revenue and the other increase is in rates, as I understand.

Q. That is the way he stated it. I am quoting his language, I think.

A. It is assumed, however, that if any increase was more than 15% there could not be an increase in revenue of more than 15% in the interstate rates. And assuming that Mr. Flippen's statement as quoted here is true and that the state and interstate rates did not bear a proper relation to each other in the first place, it would indicate that the revenue basis, based on the lower state rates, was giving the state the best of it. They were not assigned their proper proportion.

1774 Of course, the revenue basis has that fault, it is admitted, that it is not perfect and no basis is perfect that has been discovered as yet. And it would indicate in the early cases where they used the lower rate, the Commission rate, that not a sufficient proportion of expenses had been assigned to state traffic.

Q. In that particular instance, as you give it, the state would get the best of it. And if it were the other way the interstate rates would get the best of it?

A. Surely, if the reverse were wrong. Either way.

Q. The fact that I asked you in particular was if the facts existed that way, will the revenue basis be a proper measure of relation between state and interstate rates?

A. Well, for the revenue basis to be the proper measure, excluding

in this consideration the addition of anything for increased cost, the state rates should be enough higher than the interstate rates to balance that excess of cost which operating men say exist in connection with state business over interstate business and if the state rates were not sufficient to produce that revenue, the state basis would be faulty to that extent. And if they were too high and so much higher than interstate rates of course it would be faulty the other way.

Q. The point of that testimony to which I have just called your attention, is this: there was not a proper relation between state and interstate rates during the period we have under inquiry

1775 (that is 1907) and if that is true then the revenue basis would not be a proper factor with which to apportion the expenses, would it?

A. Well, it would not be an accurate factor but being in my judgment the best that is known, it would be the proper one. I think in the first question you have the word "accurate;" it is not an accurate factor.

Q. It will fluctuate according to the fluctuation between state and interstate rates?

A. Yes, sir.

Q. And it will, of course, be inaccurate to the extent that the proper relation does not exist between state and interstate rates?

A. Yes, sir, I think that is true.

Q. And when the rate does not represent the cost of the service it would not be of any value at all, would it?

A. Well, if there was such a rate, no, sir, it would not be. If there was any such rate that did not represent the cost of service at all.

Q. Now, Mr. Nay, does not the rate pre-suppose it covers the cost of service and a profit also?

A. Surely, I should think it would. As I say, I am not a rate maker but it would seem that the railroads should have some profit or return upon their investment.

Q. There should be two factors in that rate: one, the cost of the service; and the other, the profit to the railroad company in performing the service?

1776 A. If I were making rates, I think as a novice I would use those two factors. I suppose there are others. There are commercial conditions which necessarily governs; and, of course, the density of traffic, which reduces the cost of the service.

Q. That just goes to the cost of the service in that particular country, I should take it?

A. Yes, sir.

Q. Then it depends upon how much profit or how little profit the railroad company puts into its rate, as well as these other matters, in order to use the basis as a factor to determine the expenses: isn't that true?

A. I should not think the profit would make any difference, Judge Hill. That is, as to the relation between the different kinds of rates. Because I should assume that where a profit was made and my

opinion is probably not worth much on that point, but I would assume it to be distributed pretty evenly over all the rates.

Q. Would that be the condition where you have to meet competitive conditions, and commercial conditions and new industries and things of that kind? Do you think the profit could be distributed into all the rates? Probably I should put that question to a rate man, but I am asking you from your observation in handling the revenues of the company.

A. I qualified my last answer by saying it probably was not worth much, from my experience; but that was my judgment.

1777 Q. If it were shown that a large proportion of the freight traffic of a road moved on rates which are not based on cost, what effect would that have upon your opinion of the revenue basis as applied to that particular road?

A. Of course the position which I have taken is that the cost is not the only factor that is taken into consideration; that the cost is considered. Now, of course, the rates might be based—I can conceive of a case where the rates might possibly be based largely on something else than cost. But if they were made in such a way as not to consider the cost at all, then, of course, the value of the figures for dividing expenses between state and interstate would not be very great. But in my experience, I do not recall rates of that kind. There may be rates made which are very low, which appear to be less than cost; while I assume the movement of a commodity that would be recognized to be a high class commodity, moving to the same point, would take a relatively higher rate.

So, while the rate man might not have consciously taken into consideration the cost, the general schedule of rates indicate that they have done it.

There might be exceptions to that and possibly are. But in this revenue basis there would be the exceptions and the rule. The revenue basis is used as a selected factor, taking all the revenue from all classes of traffic, these exceptions together with the items

1778 that fall under the rule. So if you had a case where all your revenue was produced by those exceptions then the revenue basis would be very faulty, indeed. But, in my judgment, there is scarcely a case where all the revenue of the company would be——

Q. I did not put it "all revenue." I said "a large proportion of the freight traffic." You might take some very large commodity to illustrate that, like lumber and grain and cotton. They have shown those rates were not based upon the cost of the service. While that would not be the entire traffic of the road, it would be very considerable traffic and my question was directed particularly to such matters like that, some large movements that were not based upon the cost of the service.

I want to know just what your view would be of the effect of such large movements as I have indicated, or any other illustrations that may occur to your mind, upon the revenue basis.

Mr. MOORE: Are you assuming in the case you have in mind that the rates are made without any regard whatever to the cost of the service?

Mr. HILL: I said they did not represent the cost of the service.

A. I believe the word is "not based on the cost of the service."

Q. It represents the same idea. Not based on the cost of the service or does not represent the cost of the service?

1779 A. Of course if the rates are made not based on the cost of the service, if there are such rates, that is one of the weaknesses of the revenue basis, which I freely admit. And the weakness would be simply to the extent of the relative amount of such business as compared to the whole.

Q. Mr. Watson, the Assistant Freight Agent of the Cotton Belt, testified that the Commission's tariff, that is the intrastate tariff, was not properly constructed so far as the relation of commodities and classes was concerned; and this improper relation existed as to both less than carload and carload rates; that they were out of proportion, considering the sale of the rates in the tariff.

He further says the tariff so constructed did not represent the cost of service or anywhere near it.

Assuming Mr. Watson's statement to be true, would it be proper to use the revenue derived from such a tariff as the measure of cost of operation of intrastate traffic?

A. I think it would be proper, as I say, because I think it is the best basis I know of. It would not be accurate and I think Mr. Watson's testimony would bear out what I have said, that he does consider cost of service when he makes the rates although not entirely, perhaps.

Q. You don't understand me. He was referring to the Commission tariff, which was not made by the railroads. He stated they were out of proportion and further stated that this Commission tariff did not represent the cost of the service nor

1780 anywhere near it.

Now all the freight revenue that is in this case was revenue derived from that tariff—intrastate rates, I am referring to.

Now, I ask you if the revenue derived from such a tariff would be a measure of the cost of operation of intrastate traffic?

A. Yes, sir, it would be a measure; not an accurate measure but I think the best known measure.

Q. It would necessarily be far from an accurate measure if Mr. Watson's statement is true, wouldn't it, Mr. Nay?

A. It would depend on just how far the rates were from the cost, as representing a relative cost. Of course, we must all bear in mind that it is the relation between the two which we are using all the time; and the interstate rates Mr. Watson doubtless had a great deal to do with the making of—and, by the way, when I refer to interstate I include trans-state, too, as we have but two classes of business. He undoubtedly in making the schedule of those rates had in mind the relative cost of the different classes of commodities and as the Commission rates accepting his statement to be true that they did not represent the cost, of course, the revenue basis would be faulty to the extent that they did not represent the cost. But even with its faults, I think it is the best we have yet.

Q. "With all thy faults I love thee still"; isn't that
1781 your position about it, Mr. Nay?

A. I presume that poetry has more sentiment than business to it. But with all its faults, so far as I know, it appeals to me as being the best basis we have found.

Q. You think it is better than the ton mile?

A. Yes, sir.

Q. That is the substance of all your testimony in this case, that in your judgment it is better than the ton mile?

A. Yes, sir, that is really what it amounts to. The ton mile is better than the ton basis and the revenue is better than the ton mile. Those are the only three bases that——

Q. I have not considered the ton basis at all. And I do not suppose you have given that any serious consideration. You have just considered whether you should use the ton mile or the revenue and your judgment is in favor of the revenue rather than the ton mile?

A. Yes, sir.

Q. And that is substantially your whole testimony in this case, as I understand you?

A. Yes, sir, that is correct.

Redirect examination.

By Mr. MOORE:

Q. You stated you would not engage yourself in rate making but still you have a general idea of the basis upon which rates are made, have you?

1782 A. My idea as I have said is formed from an examination of tariffs and classifications received from rate making bodies.

Q. What do you understand to be the principal elements that enter into the making of rates outside of arguments that may be brought about by competitive conditions and special commercial conditions? What do you understand to be the principal elements that enter into rate making?

A. My judgment would be the relative cost of the different commodities.

Q. I believe you stated on your cross examination that all rate schedules contained evidence on their face that the cost of the service is observed in making them: in that connection, I want to ask if you have ever had occasion to examine the schedules prepared by the Western Classification Committee?

A. Yes, sir, I have considered their classifications.

Q. What is the purpose of that classification, Mr. Nay?

A. The purpose of it is to divide the various kinds of freight shipped by carriers into classes: first, second, third, fourth and so on. By means of which the rates that are in the tariffs may be applied.

Q. Are those rates applied with reference to the classifications made by that committee. I will ask you if that classification on commodities carries on its face any indication whatever with reference to the cost in the classification made there?

1783 A. It seems to me to be very clear that it does, and the reason I say that is, not because I had anything to do with pre-

paring the classification but because, for example, taking some things with which I am familiar.

I take corn planters first, because I was raised on a farm. Corn planters set up take double first class rates. Corn planters knocked down, in packages, take third class rates.

Q. How do the rates apply to them on that classification?

A. There is one tariff for a distance of five miles double first class would be 40 cents and third class would be 13 cents.

Or for a distance of 100 miles, double first class would be $1.26 and third class would be 42 cents.

Q. It is not worth while multiplying instances, Mr. Nay. But I will ask you to state if the illustration from that runs generally through that classification?

A. Yes, sir, it does. Another case is harrows set up with teeth one and one-half times first class, knocked down, tied and in bundles, they are third class.

Corn planters set up and harrows set up make bulky freight. There could be only a relatively small weight loaded into a car of that kind of commodity while if knocked down and put in packages there might be a great deal more loaded into the car; therefore, on the face of it, without being an operating man or a rate making man, it seems very clear even to a layman——

1784 Q. In other words, in one case they occupy much less space than the other?

A. That is the idea. All the way through the same thing prevails. Take fanning mill, first class and knocked down third class.

Bulky, light articles, which occupy little space take a higher class; and bulky heavy articles like bricks and bells and coal and sand, and so on, take a lower class. And they take a lower rate from the rate schedules.

If the charge was made by space it would be a different proposition entirely. But the reason for that is that the charge is made by weight.

Q. Your attention was called to Exhibit 23 prepared by Mr. Kimbell at the request of defendant's counsel?

A. Yes, sir.

Q. I wish you would state whether or not that illustration is based upon the condition that you have ever seen or heard of in railroad practice with regard to changing one rate without changing another?

A. No, sir. And in that respect it is like the one I mentioned in my testimony, that it was a very extreme condition and probably an impossible condition.

Q. When you say "impossible" you mean impossible in view of railroad practice and custom, do you?

A. Yes, sir, it would be impossible to have during one period $100,000 of revenue made up of $85,000 interstate and $15,000 state and in another period interstate revenue remain exactly the

1785 same and the state revenue increase 33 1-3% and the expenses remain the same.

I used that kind of example because I thought it made the illus-

tration more forcible against an argument which I find now has not been brought in. But it is an impossible condition, I should say, in actual railroading.

Q. Your attention was called to Exhibit 30 filed by Mr. McPherson and you were asked in regard to the cost and fluctuation on the red line there below the base, which indicates the earnings per ton per mile: you stated that line's fluctuations in earnings shown by the red line, might indicate a difference in the commodities; they might be higher and thereby increase the rates.

If that were true, would not that show that the revenue basis is probably the best upon which to represent those changes?

A. Yes, sir, I think so because the rates are different on the different classes of commodities.

Q. Would the ton mile basis throw any light upon it at all? Would the ton mile basis show any change in the character of the commodities which might affect the rates?

A. Oh, no. Every ton mile would be exactly the same, on the ton mile basis.

Q. What effect now would the increase in the class of commodities, assuming there was a higher class of transportation: how would that effect that line upon the revenue basis?

1786 A. The revenue would be more per ton per mile on the higher class commodity and by using the revenue basis it would assign a greater portion to the period when the higher class was handled.

Q. Would that fluctuation be shown by the diagram there, if that were the fact, if the class of commodities were higher and the revenue was increased thereby, would the fluctuation on that line indicate that?

A. I don't know that I quite understand your question, Judge.

Q. What I mean to ask you, Mr. Nay, is this: if that were the case——

A. If the commodities were of higher class?

Q. And you were to attempt to represent the earnings per ton per mile by a graphic representation, would it be reflected in the representation you make?

A. I understand the question, is, is it? If the class of commodities were higher in one period?

Q. Assuming a higher grade of commodities with reference to rates were transported in 1907 than in 1904, now if you make a graphic representation intending to represent the revenue—or, rather, if you make a graphic representation of it, would the change affected in the revenue by the higher grade of commodities carried appear upon your diagram?

A. Yes, if the rates remained the same.

Q. What has been the tendency in the average ton mile
1787 earnings since the Commission tariff was put into effect in Arkansas?

A. What date did that go into effect?

Q. 1900.

A. The tendency has been downward according to this diagram; and I think that is true of the Rock Island results.

Mr. HILL: Do you mean according to the map or according to the facts?

A. Both, I think.

Mr. MOORE:

Q. Mr. Nay, referring to the chart Exhibit 30 to which your attention has been called, I wish you would state what relation that chart shows during the period of time covered by it to exist between the expense of operating railroads and the earning capacity of the lines?

A. Well, the chart shows that such items of expense as cross-ties and all other material, train labor, track labor, and taxes have all increased very materially, some of them apparently more than double; while the average revenue per ton per mile has decreased during the period covered by the statement.

Q. To what extent, if you know, do the things that are covered by the chart there and shown to have increased in price, enter into the operation of railroads. Do they constitute a large or a small proportion of the cost of maintenance and keeping up of railroads?

1788 A. They constitute a very large portion, I can say that.

Q. That is all I want, just to know whether it is a large or a small proportion?

A. If I had some detail of operating expenses I could figure out some sort of percentage. But it is quite a large proportion of the elements of operating expenses.

Q. How does the upward trend of prices of labor and material, as shown on that chart, compare with the prices of general product of industry in this country during the same period? Such as the farms, agricultural, labor, and in fact prices generally of those things which enter into living, manufacturing and carrying on of the industries of the country? How does it compare with the trend of prices as shown upon that chart?

A. With the trend of prices it compares favorably with those other things. That is to say, I think it is a matter of common knowledge that prices of nearly all commodities that enter into the cost of living have increased: in fact, I read the statement recently by the manager of the Siegel, Cooper Grocery Company, that the only thing he was able to find that had not increased in prices was prunes. Other things had increased largely.

Q. How is it with the prices of materials that enter into manufacturing and industrial operation of the country: they have shared in the rise of prices?

1789 A. I think so. I know that steel and iron, which enter largely into manufacturing have increased largely in price, according to what railroads pay, and I suppose others pay the same prices.

Q. What has been the increase relatively in the rates charged by railroads during the same period, for transportation?

A. The tendency has been downward. The average prices of the unit for transportation has been decreased.

Q. And that has occurred while the cost of production of everything else has increased, hasn't it?

A. Yes, sir.

Recross-examination.

By Mr. HILL:

Q. Notwithstanding the increase in the cost of labor and other items shown on that chart, and the decrease in the earnings the Iron Mountain is shown to be paying 10% dividends on its stock and paying interest on a large bonded indebtedness. That would indicate that it is getting along pretty well, notwithstanding the increase in the prices, wouldn't it?

A. If it is able to keep its property in good shape and earn a ten per cent dividend over and above all its charges, yes, it is doing well.

Q. To use a slang phrase "it has not much kick coming," has it? Don't you think that is doing remarkably well?

A. For railroads, yes.

Q. Isn't that doing well for any large enterprise, to pay a
1790 large bonded indebtedness and pay 10% dividend on its stock?

A. My impression has been that private enterprises pay much better than that.

Q. Large ones, where anything like the capital that is in a railroad is invested?

A. Yes, sir, we read frequently of corporations doubling up their capital, like Sears Roebuck & Co. doubled up their capital and the Burroughs Manufacturing Company, that manufacture the Burroughs Adding Machine, which I understand are paying several hundred per cent over the original investment.

Q. They have patents upon those?

A. Their patents have all expired now, I understand.

Q. That is a large earning power for a railroad, isn't it?

A. That is larger than the average.

Q. If there is a larger profit in the intrastate rate than in the interstate rate, owing to competition that largely controls the interstate rates, wouldn't that fact, the difference in the profits on the two rates make it unfair to use the revenue, intrastate and interstate, to measure the expenses of operation with?

A. Of course, in the first place it would depend on what basis was used in determining the profit was larger in one case than in the other. But if that could be absolutely determined beyond
1791 any question of a doubt, which is an impossibility, I think, then of course the revenue basis would be faulty to the extent that difference existed.

Going back to the same statement again, that the revenue basis is not a perfect basis but is the best known basis at this time.

Q. It seems to have several faults, doesn't it, Mr. Nay?

A. These faults are really the same fault under different names, I think.

Q. Not under different names but under different circumstances; isn't that more nearly the case than under different names?

A. My idea in making the statement that they seem to be the same fault was that the two rates, intrastate and interstate, seem to be out of proportion to each other, and that is what produced this unfairness that is spoken of. If they were in exact proportion all the time, the revenue basis would be a perfect basis.

Q. And if it represented the cost of the service? You would have to have that also?

A. I presume if they were in proper relation to each other they would represent the relative cost of the service. When I say "in proper relation to each other" I mean in reference to the cost of the service.

Q. Some of these traffic men use that term in an entirely different sense. I think your use of it is correct but you will see from the testimony the others use it as having a proper adjustment to the
1792 commercial conditions. A just rate of one trade center with another trade center. That is the reason I was particular in calling your attention to it. You mean by it a proper relation of the cost of the service: isn't that right?

A. That is what I had in mind.

Q. That is what you had in mind in your testimony generally, I assume.

A. The proper relation?

Q. The proper relation of cost, you mean?

A. Yes, sir, the proper relation in regard to the cost.

Q. You said in regard to the illustration exhibit 23 and a similar one in your testimony, that that would be an impossible situation. I want to call your attention to this fact, although I presume you know it that there was this large increase in state rates and it was certainly more than 33⅓%, as assumed in Exhibit 23; for at least two months there was no increase in interstate rates. You know that to be a fact, don't you?

A. No, sir, I don't know it but I think that is correct.

Q. And during that period, during those two months, the illustration Exhibit 23 would be a proper illustration of the exact conditions, wouldn't it?

A. Only providing the character of the freight, state and interstate, was exactly the same in both months, which makes the illustration I think impossible. The relation of each of the many
1793 commodities would have to be just the same, just the same proportion of first class freight, just the same proportion of second class freight, and so on.

Q. That is the other proposition. I understood you placed the impossibility to the fact that there would not be an increase of one rate over a relative increase in the other?

A. You understood me. I mean the condition, I think I stated, whether there would be a one hundred thousand dollars of revenue in one case——

Q. I understand your point in that, but I thought you put the im-

possibility that there would be a corresponding raise of the interstate revenue. You did not put it upon that?

A. No, sir, that was only one of the conditions that made it impossible.

Q. So far as that condition was concerned, this actual thing occurred in Arkansas.

A. It might happen.

Q. And it did happen, as a matter of fact.

Now your other proposition rendered it impossible, simply because exactly the same kind of traffic does not move in a corresponding period, which of course is true.

A. Yes, sir.

Q. But taking it generally speaking, on the roads in Arkansas, I do not suppose there is a great difference in the character of the traffic, is there, in one year as compared with another year?

1794 A. Well, I have not made any investigation of that but I would suppose there is a difference and the reason I suppose that, Judge Hill, is that in compiling our monthly statistics we find the average revenue per ton per mile differs in different months, one month with another, and that the total average for the year is something different probably from either one of the months.

I had occasion to look up certain averages for six months in Arkansas, and I did not find that any two were alike. They varied from nine mills up to fourteen mills on the average revenue per ton per mile.

Q. That would always be true, I assume. There never could be absolutely uniform movement one year with another?

A. I do not suppose so.

Q. The fluctuation would be just such fluctuation as would be natural in freight handling?

A. I presume so.

Q. I infer from your answer to Judge Moore a moment ago that traffic men bore in mind, either consciously or unconsciously, the consideration of the cost of the service in making all rates: I want to call your attention to some testimony given by Mr. J. M. Johnson, whom I presume you know, the Vice President in charge of traffic of the Iron Mountain road?

A. Yes, sir, I know him.

Mr. MOORE: Was that testimony given in this case?

1795 Mr. HILL: No, it is the same testimony I have had here before.

The MASTER: The testimony is admitted subject to the objection.

Mr. HILL:

Q. This question was put to Mr. Johnson. I will give you the substance of it:

"But in making rates is the the general average of cost of moving the commodity taken into consideration in fixing a rate that will be compensatory in the moving of any particular commodity? I refer to the general average of cost you have spoken of, as shown by your records at the end of the year."

"A. No, sir, rates are not made that way. By experience we have some knowledge of about what we ought to have for the service in question, but rate making as a general proposition is largely a guess and the railroad people claim that by experience they are much better able to guess correctly than the other fellows. There are so many factors entering into the cost that it is impossible to determine the cost of moving the different classes of freight. And we can only determine in a general way, from experience, about what is fair and compensatory."

Q. Now, if Mr. Johnson is right in stating that rate making as a general proposition is largely a guess, what would you think of your revenue basis?

Mr. HILL: No, I will give him Mr. Perkins' answer. Mr. Perkins' answer made to you when you asked him that?

Mr. HILL: No, I will give him Mr. Perkins' answer. Mr. Perkins made a very good answer.

A. My idea about that is, of course Mr. Johnson knows more about rate making in a minute than I would know in a hundred years. But I am satisfied if I take the schedules that Mr. Johnson has compiled, he will guess relatively higher rates for instance for
1796 fanning mills set up than he will for sand. That is what I mean. The relative rates. Not as to whether any particular rate is compensatory or not, on that particular commodity, but the relative rates.

I am sure I could take all the tariffs Mr. Johnson has compiled in all his tariff making, and that relatively higher rates for a fanning mill as compared with sand will always prevail.

Q. Of course I understand that you would charge more for hauling pianos than you would for hauling sand?

A. Yes, sir.

Q. But that is a very broad proposition, to state that way. That gets it down to rate making. He says rate making. He is not referring to classification. He says "rates are not made that way. By experience I have some knowledge of about what we ought to have for the service in question. Rate making as a general proposition is largely a guess. The railroad people claim that by experience they are much better able to guess correctly than the other fellow."

What I want to know is if they are made that way and if made that way what value would you attach to the revenue theory?

Mr. MOORE: That is objected to because counsel is stating that as Mr. Johnson's opinion and there is no evidence that that is Mr. Johnson's opinion or any evidence of it except a mere reading of it by counsel.

The MASTER: The testimony will be admitted subject to the objection.

A. The revenue theory rests not upon whether a rate is compensatory or not. The revenue theory applies where the
1797 rates produce a deficit as well as if they produce a surplus. It bears upon the relative rates for the different kinds of com-

modities. If they guess the rates for every commodity then the revenue theory would not be any better than the ton mile theory—in other words, if they made exactly the same rate for feathers, cordwood, or what not, that would be the ton mile basis. That is what the ton mile basis would use. But as a matter of fact we know if they are guessing they do unconsciously take into consideration, if they do not do it consciously, the relative cost of the service.

They will haul a carload of saw logs for a great deal less money than they will a carload of apples, for the same distance.

Q. It is not the basic cost you are referring to but the relative cost?

A. Yes, sir, the relative cost.

Q. You understand the state rates certainly in Arkansas and probably in many other states, are fixed by the Commission; so the railroads do not get a guess at them. So you must interpret Mr. Johnson's testimony here as referring to interstate rates?

A. Yes, but my examination of the two I find that practically the same relative cost of first, second and third classes in carloads exists with the Commission as with the interstate rates.

1798 Q. You differ with lots of these witnesses, like Mr. Watson, very much, Mr. Nay.

A. His judgment is better than mine. I say practically the same. I have not compared individual rates. But what I mean, Judge Hill, is to say for example, here is an Arkansas rate, a rate for first class 50% more than the rate for fourth class. In the interstate rate tariff the rate for first class is double the rate for fourth class.

What I mean is, that they have preserved a relation and fixed a higher charge for the commodities that are classed as first class in this classification than they have for those fixed as fourth class.

Q. That is following out the classification. And I suppose they run along general lines with not much difference. But Mr. Watson in our last hearing took a great many instances of the leading commodities in the state and pointed out where there was an improper relation between state and interstate rates. I have forgotten now how many but especially in the case of commodity rates, where it called for a large movement.

In view of these facts and in view of the fact that Mr. Johnson said interstate rates (it must have been interstate rates) are largely made by guess, what would you say to the revenue theory applied under conditions like that?

A. I still think it is the best we have.

Q. These facts I have just enumerated in this question would very much impair its value, wouldn't they?

1799 A. No, sir, I don't think so. I understand the relative difference between what we call high class commodities is still preserved, even where the relation may not be perfect, still there is a difference between millinery and pig iron.

Redirect examination.

By Mr. MOORE:

Q. Your attention was called to the fact that at the time the rate

charged by railroads was increased by putting in a voluntary rate by the railroads in November, 1908, that some weeks lapsed before a corresponding change was made in the interstate rates: could that be avoided under the rule of the Interstate Commerce Commission requiring notice, and other rate matters that entered into a change in the interstate rates?

A. Of course I am familiar with the rules of the Interstate Commission requiring thirty days' notice before a rate is advanced; and there would be at least that delay before a rate could be advanced.

Q. In your experience and knowledge of railroads, have you ever known of a radical change made in one class of rates, state or interstate, and a change to correspond with it not made in the other class as soon as it could be done?

A. I have not checked up such matters, Judge Moore, to be able to state positively; but from my general understanding I should say not; although there may be some few cases of that kind.

1800 Q. You know the rule in such cases?

A. Yes, sir.

Q. During the last few years, say eight or ten, what has been the tendency as to the earnings with reference to the increase of the industrial concerns generally of the country,—industrial and manufacturing establishments? Have their earnings, their profits and prices grown larger or have they grown smaller or what has been the trend during the last eight or ten years, since 1900?

A. I really do not know, except as to prices.

Q. And what has it been as to prices?

A. As I said before, prices of nearly everything have advanced,—as I guess we all know.

1801 I. G. RAWN, a witness of lawful age, being duly produced, sworn and examined in behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. MOORE:

Q. Mr. Rawn, state your full name, please.

A. I. G. Rawn.

Q. Will you state your occupation?

A. President of the Chicago, Indianapolis & Louisville Railway.

Q. How long have you been engaged in railroad service, Mr. Rawn?

A. Twenty-five years, or more.

Q. Will you state concisely what your experience has been in railroad operation, stating the various positions you occupied and with what railroads?

A. In official positions, I have occupied that of Train Master, Superintendent, General Superintendent, General Manager, Vice President and President.

The railroads with which I have been connected are, what is now part of the Big Four; the Kentucky Central; the Chesapeake &

Ohio; the Illinois Central, and the Chicago, Indianapolis & Louisville.

1802 Q. Have the positions that you have occupied given you any facilities for making investigation as to the cost of operation in the transportation of freight by railroads?

A. Yes sir.

Q. Have you given that subject any thought and consideration, Mr. Rawn?

A. I have.

Q. The lines of railroads mentioned by you as those with which you have been connected, are all, I believe, east of the Mississippi River; have you had any experience in the operation of roads west of the Mississippi River?

A. I have not.

Q. You have no knowledge, then, I take it, of local conditions in that territory?

A. None whatever.

Q. Have you given any consideration to the question as to whether there is any difference in the expense or cost of operation as between local and through trains, and in the expense of handling traffic which is hauled on local, and that which is hauled on through trains?

A. I have.

Q. I wish you would state if, in your judgment, there is any difference in the expense of operation as between local trains and through trains?

A. Yes, there is a difference.

Q. Will you now state, Mr. Rawn, in your own way, what the difference consists of? I will be glad if you will make as

1803 full and complete a statement as necessary to present your views.

A. As I understand, your question and inquiry is as to whether in my judgment there is any difference in the cost of operating what is termed through freight trains, and local freight trains?

Q. That is my question, yes sir.

A. There is a considerable difference. Do I understand from your question that you desire my opinion as to what constitutes the difference—how it is brought about?

Q. Yes, that is what I intended to ask you: what that difference consists in; what differences exist as between the one class of freight and the other, and what brings about and creates the difference in cost?

A. The difference in cost is in favor of the movement of through freight.

Q. I understand that you mean by that, that it costs more to handle local trains—that traffic which is conducted on local trains, than on through trains: is that what I understand you to mean?

A. Yes; the difference in the increased cost in handling local freight trains, as compared to through freight trains, is occasioned by many conditions.

The local freight train necessarily consumes more time in making

the same distance, than the through freight train, because of doing what we call local work, at the different stations. The through
1804 freight train goes over that same district without making the stops and doing what is termed the local work. As a consequence, the time consumed by the locomotive and cars, engine and train crew, is necessarily greater on the local freight train than on the through freight train.

The rate of pay is higher per unit on the local freight train than on the through freight train. There is less use obtained by the Railroad Company of the locomotives and cars used on local freight trains than on through freight trains, because of the additional time consumed in making a relative distance. The consequent consumption of fuel and supplies is relatively greater because of the additional time consumed in going a given distance, and the additional switching necessary at all of the local stations; the general local work at the different stations, which is not done by through freight trains.

All of that very materially enters into the cost of the local freight train in excess of the through freight train. The Railroad Company must of necessity have a greater capital investment in locomotives and cars in the performance of local freight business, than through freight business, because of the additional time consumed by the local freight train over the through freight train, per given distance, as I said before.

The expense to the Railroads of the maintenance of their station forces is, in great preponderance, due to the conduct of local
1805 business and not through business. That becomes a very large item of cost consequent upon local business. That is true at all stations, and if it were not for the local business the large forces at all of the stations would not be necessary nearly to the extent that it exists.

The train load handled by the locomotive on local freight trains is very much less than that handled on through freight trains. As a rule, through freight trains are not run over railroads excepting where there is what we call full tonnage, for the locomotive; the recognized tonnage which the locomotive is capable of handling. That is not true of local freight trains. Local freight trains are run daily, without reference to the amount of business on that particular day. It is a regular service that must be performed. Even if there is what might be termed a full train for a local freight train, it would be of very much less tonnage than that handled by the same locomotive on the through freight train, because of the necessity of stopping at all stations and doing the local work, and the (in a way) limited amount of tonnage in local service, as compared with through service. Hence, the very material reduction in the tonnage handled per locomotive; hence the increased cost in handling local freight as compared with through freight.

Q. In your enumeration, I think you said nothing in regard to the effect upon the cost of maintenance of equipment and of way, grow-
ing out of the different method of handling the two classes
1806 of trains: if there is any difference in the method of handling which has an effect upon the relative cost, will you explain that also?

A. I would not consider there was any difference in the cost, so far as maintenance of way was concerned. There would be some additional cost—considerable additional cost with reference to the maintenance of locomotives, for two reasons:

In the first place, the greater number of locomotives it would be necessary to maintain in the conduct of local business, accomplishing the same train mileage or ton mileage as the locomotive in through freight service; hence the material increase in the maintenance, by reason of the additional number of locomotives.

Another element of increased maintenance cost would be the lesser miles made by the local freight locomotive; hence the increased cost per engine mile for repairs.

I do not consider that there is any material increase in cost in maintenance of cars in local freight business and through freight business.

Mr. HILL:

Q. You just put that difference on locomotives?

A. Locomotives particularly, is the item.

Mr. MOORE:

Q. Are there not switches which are used—side tracks, in the operation of local trains for the purpose of distributing local freight, that are not used by the through trains as much (if at all) as they are by local trains?

1807 A. Oh, yes, to a considerable extent.

Q. What is the effect of wear and tear upon the cost of maintenance, in that class of operating?

A. Of course, all of the wear and tear upon the sidetracks purely local to each station, is made by the local business.

The side tracks at the stations used for what the railroad companies term "passing side tracks" is used by both local and through trains, so the maintenance of the passing siding should not be considered more cost for the local business than the through freight business. I think I would in a measure qualify, to the extent that the tracks are used purely for local business at the different stations, their maintenance would be chargeable wholly to local business.

I had in mind, when I said there was no difference in maintenance, the main tracks, the passing side tracks, the buildings, etc.

Q. You have mentioned the use of stations and station service, as growing very largely out of local traffic: what are the elements of additional cost incident to terminal service in the use of local trains, and the distribution made by local trains?

A. Do I understand you to mean at stations?

Q. Yes, at stations.

A. Do you mean what enters into the increased cost by reason of local business?

1808 Q. Yes.

A. Its increased forces, increased number of men necessary to the operation of the station, by reason of the local business. As I stated before, if it were simply the through business, one man

might possibly do all of the business; while with the local business at that same station—just in the way of illustration—there would, perhaps, be three, four or five men necessary. That would depend, of course, upon the character of the station and the volume of local business done.

Q. You include in that the clerical work that is incident to that?

A. It is largely clerical work, and laborers.

Q. When you spoke of cars a while ago, in connection with the maintenance cost, I suppose you spoke with reference to car for car: I will call your attention to the fact (which I believe you stated in the former part of your testimony), that more cars are used in doing a given amount of local business, than through business: what effect does that have upon the cost of maintenance as a whole?

A. As the increased number of cars bear to the total number of cars used.

Q. There is, then, an increased cost of maintenance in that way: that more cars are required to perform the same amount of service?

A. Certainly.

1809 Q. What relation is there, if any, between local and through traffic, and state and interstate traffic? I will be glad if you will explain what, in your experience, you have found to be, if any, the relation that exists between the two classes of freight traffic.

A. For the purpose of determining the cost of operation of transportation, the question of state and interstate traffic is not the method of consideration. The method is that of through and local business. I would consider, however, that the relation (if it may be termed so), between through and local business, and state and interstate business, would be that state business might be termed a local business, and interstate business a through business.

I would not consider those lines as accurately drawn, but state business is of necessity limited in territory and extent, and so is local business. So that I presume, to a very great extent, on railroads throughout the country, the local freight trains as a rule would be confined to within states, although that would not wholly apply, and railroads do not run their local freight trains with a view to confining them within state lines. But to my mind, there would be a relation between state and interstate business, and through and local business, in that state business would very nearly conform to what we term local business, and interstate business would ordinarily conform to through business; if that answers your question.

1810 Q. I wish you would state, taking into consideration the direct train expense and other expenses, such as terminal at stations, the difference in the cost of maintenance, either of way or equipment, and all the elements that have been mentioned by you, what difference you estimate there is in the expense of conducting local as against through business?

A. That subject has been a matter of very great consideration on all railroads for a long period, for many reasons and many purposes, and my own deduction and investigation leads me to say that I have regarded—and it has been universally regarded—that the

operation of local freight trains—the direct cost of operation of local freight trains, as compared with through freight trains, is a minimum of 3½ times more.

That has been a generally well accepted basis, I think I am safe in saying, excepting further, that there are a number of elements entering into the cost of local freight trains, as compared with through freight trains, that increases that difference.

Q. Let me see if I understand: do I understand that in the statement just made by you, that you refer to direct train expenses when you say three and a half times as much?

A. Well, I would refer to direct train expenses, and, if it expresses it properly, things contingent thereto. There are many details that enter into what we call direct train cost, so that that is rather
1811 a broad proposition, in that it takes in many details——

Q. Excuse me for interrupting you, but I will ask you to go on with your statement later.

I would like to know if there are other elements, and if there are, what are they?

A. One of the very important elements that enters into the difference in cost between local and through freight, is the limited tonnage of the local trains compared to the through trains. In the operation of railroads it is termed the "ton mile cost."

In other words, the capacity of a locomotive to haul freight and the load which it does haul. Therefore, any material reduction from the capacity of the locomotive very materially increases the ton mile cost, because of the reduction below the capacity of the locomotive.

Q. Is that in addition to the elements that you considered in your former answer?

A. Very largely so. The station expense—and I would say with reference to the station expenses, as I did about the direct train cost—there are many details entering into the station cost (but it would properly be termed a station cost), which increase materially the cost of handling of local freight. So the proposition of 3½ times the cost does not, in my opinion, cover the entire difference in cost between handling through freight trains and local freight trains. That is an opinion I have held for a number of
1812 years and is based upon my experience and investigations made.

Q. Could you undertake to state what the total difference (considering all the elements thus involved in the difference of tonnage or station expense) would amount to?

A. I do not think I should make that statement; no; for the reason that to be altogether accurate as to the total amount, I would say that detailed figures should be produced, which I am not in possession of at the moment.

I simply want to emphasize as my opinion, based upon years of experience and investigation in this matter, that the minimum difference in cost we have regarded for a number of years, as between local and through freight service, is 3½ times; and I further emphasize that there are many elements entering into the cost which increases that difference.

That is the only statement I would be willing to make and I would not be willing to make any statement of figures, for the reasons I have given.

Q. I suppose you mean that that depends upon local conditions?

A. Not altogether. It depends upon local conditions, and yet the same general elements enter and govern on all railroads, to more or less extent; but what I have in mind (if I can make it clear) is, if I were to say to you it is five times as much, it would be perfectly competent that I should show figures, but I am simply giving my opinion as an experienced railroad man.

1813 Q. Now, then, to sum it up, Mr. Rawn, if I understand correctly: your estimate of train cost, of those things incident thereto, which you enumerated in the first part of your statement, would make a difference of 3½ times as much expense in conducting the local over the through freight trains and business; that there is additional expense, such as difference in tonnage, terminal expense, station expense, which are not included in that, and you do not undertake to state what——

A. That is correct, including the capital value of locomotives and cars, and that sort of thing.

Q. Mr. Rawn, I understand that the matters in regard to which you have been testifying, are such as are general and common to all railroads throughout the country?

A. I should say so, with a possible slight difference in local conditions; but I would consider that the same general principles apply.

Q. Excluding such modifications as might grow out of local differences, topographical and other local conditions, is the practice in local transportation and the conduct of it, about the same on large railroads throughout the country, in a general way?

A. Yes, substantially the same, I think.

1814 Cross-examination.

By Mr. HILL:

Q. What familiarity have you with the Iron Mountain in Arkansas, Mr. Rawn?

A. None whatever.

Q. You have been over it, I presume?

A. Yes, some years ago; not during the past ten years, perhaps, or more.

Q. You are testifying as to general conditions as you find them in the railroad world with which you have been familiar?

A. That is correct; east of the Mississippi River.

Q. I wish you would give your definition of local and through freight.

A. Through freight is composed of carload shipments which pass directly from one district or divisional point to another district or divisional point, or beyond, and as a rule, does not stop between district or division points, with the exception—for your information (doubtless you are familiar with it, but for your information), an occasional car might come from a distance and pass a district or divis-

ional point, and go to its destination between district or divisional points.

As a general proposition through freight, as I say, is made up in train loads and carload lots, and passing between district or divisional points, or beyond.

1815 Local is principally made up of less than carload freight, destined to local stations between district or divisional points where the local freight train is scheduled to run, and more or less carload freight for such local stations.

Q. Does not the through train carry the less than carload freight that goes through the division?

A. Do you mean goes beyond the divisional point?

Q. Yes.

A. There are instances of that kind.

Q. They are quite common, are they not?

A. Yes, to a limited extent.

I shall use west of the river as an illustration; assuming that the practice is general throughout the country: a less than carload car might be loaded at St. Louis, and be carried by a through freight train over one or two divisions, before going to some point where it would begin distribution by a local freight train; to that extent.

Q. In other words, your through freight trains would carry less than carload freight?

A. Only long distances, for distribution upon a restricted district.

Q. But through and local trains carry state and interstate freight, do they not?

A. As a rule, yes.

Q. I did not quite catch your relation between the local to the state, and the through to the interstate: I wish you would explain that a little more fully, Mr. Rawn.

1816 A. I said, or intended to say, that in the operation of a railroad, the definition has not been, or the distinction has not been, in the class of operation and cost of operation in the difference of state and interstate traffic, but in answer to the question, it seemed to me that the nearest relation would be to liken the state freight to the local, and the interstate freight to the through; inasmuch as the local freight trains, I presume as a rule, throughout the United States, are run within a state—although that is not altogether so and is not designed so by the railroads; the railroads run their local trains in certain districts whether it happens to pass a state line or not; but I think it is safe to say that the preponderance of local freight trains in this country are run within a state, and therefore a restricted district. So is the state freight a restricted district; while the through freight, of course, runs without any reference to state lines as well, and usually longer distances. I said that for comparative purposes it seemed to me that the interstate might be likened unto the through freight. That is the relation I intended to convey.

Q. Assuming for the moment that it is correct, as a general proposition, that local freight is run within state lines: that does not mean that it carries state freight entirely, or even necessarily a large proportion of state freight, does it?

1817 A. It does not mean that it necessarily carries only state freight. I would think that it would carry a great preponderance of state freight.

Q. Has your experience led you into the handling of cotton?

A. I have had to do with it; I don't know to what extent you mean by experience.

Q. I mean whether the railroads you have been connected with have been cotton carrying roads?

A. Yes, the Illinois Central is a cotton carrying road.

Q. You, of course, are then familiar with the way in which cotton is carried by local trains into compress points, and from compress points on to the seaboard?

A. Yes sir.

Q. There would be an instance of a local train handling a very large volume of traffic which was interstate, would it not?

A. Yes, as a specific traffic, that is correct.

Q. Lumber which is gathered up first from the forest; then carried to the saw-mill, and then from the saw-mill out to interstate points, would be another instance of the local train handling a large volume of interstate traffic, would it not?

A. Yes, excepting that that would be, I should say, very much less than the cotton, for the reason that the logs are usually handled by the logging roads to the mills, and they become a trans-
1818 portation, as a general proposition, from the mills.

Q. I call your attention to the fact that Arkansas is one of the largest lumber producing states in the country.

A. I am not under-estimating the volume of the lumber business, but I am taking up the point that you make as to the local freight trains handling a large volume of logs that afterwards becomes interstate freight. I say that that, in my opinion, would be a small matter in comparison with the amount of cotton that is so handled.

Q. I put two propositions there, Mr. Rawn. I think you just caught one. There is a movement of the logs to the saw-mill, and then there is a movement from the saw-mill to the next division point—saw-mills are not, as a rule, division points, I presume?

A. Well, they are and they are not.

Q. Of course, some are and some are not, but there would be two movements——

A. Yes sir.

Q. The movement of the logs into the saw-mill, and then the movement of the sawed lumber out to the next division point, if the saw-mill did not happen to be stationed at the division point: is not that correct?

A. I shall have to answer that based upon my experience in this respect, and not with reference to Arkansas.

The large preponderance of lumber handled from Louis-
1819 iana and Mississippi is not handled as you say, by local freight trains. The larger mills are served at the district or divisional points, or by through freight trains, and not by local freight trains, although there is more or less handling of it, as you state. There is a large amount of handling of cotton in the manner you state.

Q. Practically all of the cotton is handled that way?

A. Necessarily so.

Q. I believe it is in evidence here that less than one per cent is consumed locally, in Arkansas.

A. I am not prepared to say.

Q. That is a conceded fact in this record.

A. Yes, I think so.

Q. There are shipments of grain that come from the grain districts into Arkansas, and are then distributed out from trade centers, some as a new shipment, but I believe most generally on the milling in transit rate from point of origin: that large volume of grain that would be shipped out under the original rate, would be necessarily interstate shipments, and that would move on local trains, would it not?

A. I should think so, although I am not familiar with such traffic.

Q. Speaking as a general proposition, that would be the course of handling it?

A. As I recall, the volume of grain business going into that portion of the south with which I am familiar, was altogether
1820 a re-consigned proposition, from a point like Memphis, and was not a milling in transit rate. That is my recollection of it, but whether——

Q. We can concede it, I take it in this case, that the grain moves on the milling in transit rate: assume that to be true, for the purpose of my question: then there would be a large movement of grain on the local trains, after it reached the trade center in Arkansas, would there not?

A. I am not familiar with the conditions, so I do not think it is competent for me to discuss that.

Q. I give you these different instances, Mr. Rawn, on cotton, lumber and grain, to show a very large interstate movement on local freight trains, which I believe you accept as being the general condition of affairs, and ask you if in view of that fact, you would consider that there was any close relation between the local train and the intrastate traffic?

A. I stated a moment ago, or intended to state, in answer to your question, that while there is more or less interstate business moving on local trains, as you say, I give it as my opinion that the great preponderance of freight moved on local freight trains, is state freight and not interstate. That is my best judgment. The question of territorial boundaries of local freight trains has never been, as I said before, regarded as between state borders; but I think that investigation throughout the country will show that perhaps more largely confined to within state borders.

1821 Q. I understood your general proposition, but I was calling your attention to what was in evidence in this case, as to conditions in Arkansas, and asking you—assuming these conditions that I have stated, to be true—if that would not disturb somewhat the relation which you have given of interstate to local, as you generally find it?

A. Well, I should think if it is shown to be a fact that the local

freight trains in the state of Arkansas actually handle the preponderance of interstate freight, that is one thing, but I would have to say that in the first place, I have no knowledge of Arkansas, and in the second place, the statement you make with reference to local freight trains in Arkansas has not been my experience during my time.

Q. That is what I supposed, and the reason I was stating to you what we conceive to be the facts that have been developed here, and ask you to give your views, assuming the facts I stated to you are correct.

I take it those are not what you have generally found to be the case?

A. No, and therefore it seems to me that I am not competent to discuss a matter with which I am not at all familiar.

Q. I would not think of questioning your competency to discuss these propositions.

A. I thank you very much, but I question my own competency, because I have no knowledge of them.

1822 Q. Then, if the situation in Arkansas is about as I have outlined in these questions, you would not consider yourself competent to discuss the relation of the local to the through?

A. No, because it is at variance with my experience.

Q. Let me state another proposition to you that I believe is conceded in this evidence to be a fact: at the two extreme borders of the state are two large distributing points, Memphis and Fort Smith. Memphis, you know, happens to be across the river and all of the freight coming into Arkansas from Memphis is necessarily interstate.

Fort Smith, while in Arkansas, has the line of the Iron Mountain running into Oklahoma, which carries all of its freight through Oklahoma, and makes that interstate freight. Excluding the transstate freight (and by that I mean freight passing across the state) the proportion of the interstate freight handled in and out of Memphis and Fort Smith is about 13% of the total of that class of interstate freight in the state of Arkansas—I believe, to be accurate about that, it is 13% of the tons and about 3% of the ton miles. That, I presume, would bring about a condition in the relation of the through and local trains in Arkansas, different from what you had in mind when you were stating the general proposition affecting their relation?

A. I would consider that only to the extent to which such freight applied. Perhaps in answering a different way, and not to evade your direct question, a local train starting from Memphis,

1823 going into Arkansas, would have the same elements of cost, even though it happened to pass from Memphis across the river into another state. For the purposes of operation and the costs of operation, of course the elements would be the same, notwithstanding the local freight train crossed the border line from one state to another. Perhaps the mileage would be the same per day as though it were all confined to the state of Arkansas or Tennessee.

Q. That is true, Mr. Rawn, but in this case——

A. Pardon me, I would still say, in answer to the original question, and in answer to your question, that if you were to make a comparison between state freight and interstate freight, and local freight and through freight, that it would be proper, and to my mind more competent than anything else, to liken the state freight to the local freight, and to liken the interstate freight to through freight. It seems to me that the relations are more nearly correct, if we discuss a relation. That is what I mean.

Q. Mr. Rawn, the evidence in this case shows that this freight in and out of Memphis and Fort Smith, which you have very correctly said carries on a local freight, would not differ in cost by the fact that it crossed the state line; but that is carried in this case as interstate traffic, and properly so, under the law.

1824 A. I would like to ask in that connection, whether that is not a question of the rate, possibly, on interstate traffic, while, as I understood, it is the desire that my evidence should be as to the cost?

Q. It is carried on an interstate rate, Mr. Rawn, and it is classified as interstate freight, and in making the division between the state and interstate in the exhibits in this case, that is part of the interstate business, and the cost apportioned accordingly.

A. Of course, I have no desire to discuss my friends who are operating that railroad. The fact that they maintain an interstate rate or local rate, will not change the condition of their cost in the operation of that local freight train.

Q. It would be entirely a matter——

A. That is a matter for them to decide, however.

Q. Mr. Rawn, you spoke about the industrial or local tracks, at stations, and that the local train would go in there to get cars: you do not mean that you would attribute all of that to the state traffic, do you?

A. I think it is quite evident that I was talking about local freight and through freight, and that I was determining the cost as between local and through.

A. I thought so, but you spoke of the direct cost of local as against the through: can you get the direct cost of local as compared——

Mr. MOORE: Take transportation cost: what he understood me to mean was the cost incident to transportation——

1825 Mr. HILL:

Q. Can you get a direct cost of one train as against the other?

A. You can as pertains to many elements; some are necessarily an approximation. For instance, you take the maintenance of way, all that sort of thing that has to be arbitrarily divided.

Q. What is that?

A. The question of maintenance of way is necessarily divided between different classes of trains.

Q. Is that transportation cost?

A. No, that is a maintenance cost.

Q. Mr. Moore wanted me to confine you to transportation cost, but I would be glad to have you give your views on the whole subject.

Mr. MOORE: You are mistaken. I was asking for information to know whether he confined certain remarks he made to direct transportation. I wanted to know what his estimate of three and one-half times applied to.

Mr. HILL:

Q. I will ask Mr. Rawn to give us his views as to getting at the direct cost of transportation.

A. I hope it will be understood, so as to economize time, that I said in reply to the question a few moments ago, that I shall decline to enter into the question of dollars and cents, or percentages; I shall not do that.

Mr. HILL: I understand that.

A. I desire to give in this testimony, my judgment based upon my experience.

1826 Q. That is what I am calling for.

A. Based upon experience, and a great deal of investigation, we find a very increased cost in the operation of local freight trains, by reason of the increased unit of wage. The local freight engine men and train men get a higher rate per mile a day, than the through freight men, and the cost of fuel and supplies is greater because of the increased time——

Q. I believe you misunderstood me.

A. That is a transportation cost.

Q. I am not asking you for figures and things of that kind, but a method for getting at them. You refer to getting at the direct cost and I want to know how you would get at the direct cost of those two kinds of trains.

A. Of the items that I have referred to, we get at the direct cost by reason of the difference in the rate of pay——

Q. That can be found on your books?

A. Yes; and in the difference of the amount of coal consumed

Q. That can all be ascertained?

A. Yes sir.

Q. What I wanted to get at is this: if this can be ascertained and those that cannot be ascertained definitely, how would you approximate them?

A. The approximation is based upon many conditions of the different railroads. It would vary to some extent, and

1827 while the general result would be in a measure approximately the same, yet there would be many variations.

The direct cost would be, as I say, that of wage, that of consumption of fuel and supplies, and that of the ton miles, which is a very decided difference, and of course, an accurate measurement, because that is a matter of record with all of the railroads. They determine very accurately the ton miles of the local freight trains, and the ton miles of the through freight trains, and the mixed freight trains, so that that is a method of determining——

Q. Is that an accurate method?

A. Absolutely so.

Q. —of determining the cost?

A. Yes, because it is the ton miles which they make, and of course the cost——

Q. I am not asking about this extra cost. You have explained that. I am asking you how you divide your expenses between the local train and the through train.

Mr. MOORE:

Q. Is your answer complete? If not, complete it.

A. Thus far.

One of perhaps the most accurate methods of determining the division of costs, if that is proper, is the ton miles. That is one of the very large elements and methods of determining the cost of the through freight and the local freight; on the question
1828 of maintenance and many other things that would otherwise not be determinable.

Q. What besides maintenance?

A. Maintenance of equipment and maintenance of way.

Q. You would divide those on the ton mile?

A. Very largely so, as well as on train mile, between passenger and freight.

Q. How about maintenance of equipment between passenger and freight?

A. Well, of course, the passenger equipment is charged to the passenger miles, and freight equipment to freight miles, so that determines itself. When you speak of maintenance of way and maintenance of equipment, you have taken all there is except the cost of transportation, what is termed conducting transportation, and capital.

Q. Then if I understand your view it is this: that on maintenance of equipment and maintenance of way, you would divide that on ton mile——

A. Or train mile.

Q. As the case might be; and as to conducting transportation, which would be all of the balance of the expense, you would arrive at actually?

A. No, there is part of that that would necessarily be determined on a train mile——

Q. What would that be?

A. Part of the station expense, for instance, would be determined on a train mile, between the passenger and freight; the
1829 agent or force at the station that performed a certain amount of service for passenger.

Q. Coming back to the local and through: how would you determine that?

A. That is not determined except taking the individual railroad and the individual stations, but the principle is the same throughout.

Q. You would do that on a tonnage basis, would you?

A. Not necessarily.

Q. How? I am trying to get at that.

A. I am going to answer that. A man familiar with that particular railroad—the manager, if you please, would determine that. Say at station A. there was a force of an agent, five clerks and three laborers. He would determine, from his knowledge of the business and the operation of the station, the proportion of that station which would be chargeable to through and local.

Q. In other words, if there was fifty per cent of local business at that station, and fifty per cent of through, you would divide it equally?

A. That is right, but the preponderance, as I said a moment ago, is of course local because of the——

Q. I am just using that as an illustration.

1830 Redirect examination.

By Mr. MOORE:

Q. Mr. Rawn, the through traffic as distinguished from local, is that which usually transports freights from centers of trade or manufacture, from one section of the country to another section, for the purpose of distribution and consumption, is it not?

A. I presume that is a fair definition, although the through freight business—and for the purpose of determining cost of through freight trains—is any business which the through freight train may handle between district or divisional points.

Q. I am not speaking with reference to the cost, but the use: I want to know, in view of the location of centers of trade and manufacture in this country, and also the consuming districts which are usually supplied from those centers, whether state lines are disregarded, and this through business does not largely consist in transporting business from one state to another, growing out of trade and manufacturing centers, as relating to consuming centers?

A. I think that is correct.

Q. What is the purpose of the local train; is it not a distributing train?

A. Yes, within a restricted district.

Q. It is a peddling train which distributes this freight that is brought in by the through train?

A. Yes, or that which originates at the place where the
1831 local freight train originates.

Q. You spoke a while ago about determining the cost by ton or train miles: is that the gross or net expense that you referred to?

A. Gross expense.

Q. Would you undertake to divide the expense of conducting——

A. Pardon me, I said gross expense. When you say net expense, may I ask what you mean?

Q. Perhaps I used the term in the wrong way there, because there is really no such thing unless it would be gross or net revenue.

A. That is why I asked you what you meant.

Q. What I want to get at is this: would it be feasible to under-

take to divide the expense of conducting state and interstate traffic, in your judgment, by the ton miles, without regard to the qualities and characteristics of the freight that is to be moved?

A. I would not consider that a very practical proposition.

Q. The question I asked you a while ago suggested to me that you spoke of dividing the ton miles between local and through business: do you mean gross ton miles or net ton miles?

A. The gross ton miles enter into the cost; it is what it costs the railroad company to transport the whole thing——

Mr. HILL:

Q. The difference you mean, is the difference in company
1832 freight handled—the difference in company material and equipment?

Mr. MOORE: No, it is the difference, as I understand it, between the freight that is net, and the freight and equipment——

A. I was only talking about ton miles on commodities.

1833 W. J. MCKEE, a witness of lawful age being duly produced, sworn and examined on the part of the complainant, testified as follows:

Direct examination.

By Mr. MOORE:

Q. State your full name?

A. W. J. McKee.

Q. Are you engaged in railroad service?

A. Yes, sir. I am General Superintendent of the Missouri Pacific Railway Company, at Kansas City.

Q. How long have you been engaged in that kind of service?

A. Since 1873.

Q. In what capacity did you enter the service?

A. As telegraph operator; then as agent; and then as train dispatcher; chief train dispatcher; train master; assistant superintendent, superintendent, and general superintendent.

Q. With what road did you begin your service?

A. On what is now the Big Four, in Cleveland, Ohio.

Q. And how long were you with that road?

1834 A. 16 years. With the Cleveland, Delaware & Cincinnati.

Q. And what road did you go with when you left there?

A. The Chesapeake & Ohio.

Q. And how long were you engaged in that service?

A. I don't recollect just the date. There is a biography that will tell that. I was there probably two or three years.

Q. Where did you go when you left that service?

A. To the Central of Georgia at Savannah as train master.

Q. And how long were you there?

A. Eighteen months.

Q. Then where?

A. What is now part of the Illinois Central. It was then the Louisville, New Orleans, Texas & Pacific. It is now the I. C.

Q. How long were you engaged there?

A. I was there six months and was then transferred to the division between Louisville and Memphis, now all owned by the Illinois Central.

Q. In what capacity were you there?

A. Superintendent in both places.

Q. Then where did you go?

A. Then in 1893 I went to Little Rock as Superintendent of what was then the Central division extending from Coffeyville,
1835 Kansas, to Alexandria, Louisiana, with headquarters at Little Rock and stayed there until 1900.

Q. In what capacity?

A. Superintendent.

Q. Go ahead.

A. I was then transferred to the Arkansas Division which included the line between Poplar Bluff and Texarkana, Memphis and Bald Knob, Knobel to Helena, and various branches of the Arkansas Division.

Q. Through Arkansas you say?

A. Yes, sir, through Arkansas.

Q. How long did you remain on the Arkansas division?

A. Until 1902 when I was transferred to the Colorado Division at Pueblo, Colorado. I stayed there three or four months and was transferred to the Eastern Division at Sedalia, which embraces the lines from St. Louis, Kansas City and Joplin.

I stayed there four years and was made General Superintendent of the middle district, with headquarters at Coffeyville, Kansas.

Q. What was your jurisdiction under that assignment?

A. I had the Iron Mountain lines between Little Rock and Coffeyville, between Newport and Carthage, Wichita, Southern Kansas, and the Joplin divisions of the Missouri Pacific.

After staying there a year and a half they discontinued the middle district and split the general superintendent's territory into
1836 two districts, the northern and the southern and I was sent to the Southern district at Little Rock.

After staying there one and one half years I was transferred to the northern district at Kansas City, where I am now located.

Q. What territory was under your jurisdiction when you were at Little Rock the last time?

A. I had the lines south of St. Louis and west of Coffeyville and the dividing line at Carthage.

Now, the dividing lines were St. Louis, Coffeyville, and Carthage, the same as now.

Q. Was that the time your headquarters were at Little Rock?

A. Yes, sir.

Q. Did that take in any of the Arkansas lines?

A. All of the Arkansas lines.

Q. You spoke of your service on the Big Four, the Chesapeake and Ohio, and the Illinois Central; I believe Mr. Rahn, who pre-

ceded you on the stand, testified that he was connected with those roads during the period of his service: were you engaged on the same lines with him at any time when he was there?

A. All the time. All the time on the Big Four and the Chesapeake & Ohio. In other words, Mr. Rahn employed me to go from the Big Four to the Chesapeake & Ohio when he went there.

Q. Mr. McKee, you are familiar, then, are you, with the
1837 conditions that existed upon the roads upon which Mr. Rahn was engaged, and in regard to which he testified this morning, during the time he was there?

A. Yes, sir.

Q. I wish you would state whether there was any similarity in regard to the conditions as to matters of transportation on those lines and the lines of the Iron Mountain and other roads in Arkansas?

A. They are similar? In what respect do you refer to?

Q. In the matter of conducting transportation and in such matters as would enter into the cost of transportation, through transportation and local transportation?

A. Why, yes.

Q. Have you had occasion during your experience in railroad service to give any consideration to the question as to the cost of conducting transportation?

A. Yes, sir.

Q. Have you given any attention to the question as to the relative costs in the different departments of traffic, such as local and through transportation?

A. That word "traffic" in there——

Q. Perhaps I had better use the word transportation, instead of traffic?

A. Yes, sir, I have.

Q. What is a through train and what is the character of traffic usually conducted on through trains?

1838 A. Through trains are trains consisting first of cars loaded as much as possible to their capacity and trains loaded to the capacity of the engine. That is what a through train is.

Q. What is the character of freight usually carried on through trains, as between state and interstate freight?

A. It is mostly interstate. In fact, there is only a very small proportion—a very small proportion—of intrastate freight carried on through freight trains compared with the entire commodities carried on through freight trains.

Q. How is the running of through freight trains regulated. Do they run at regular stated times or are they governed by other considerations?

A. They are run whenever they can get a full tonnage for a train except to even up the power. In other words, they must have full tonnage in one direction.

Q. What is a local freight train?

A. A local freight train is a train of which the commodities largely consist of what is termed "less than carload freight." It might be

a full car of freight but we would term it less than carload freight; not usually a full car, but what we term less than carload freight is what the locals mostly consist of. And they are run for the accommodation of intermediate towns on a division, and must run every working day, regularly.

Q. Are they run with reference to divisions? You spoke
1839 of divisions just now: are they run between division points usually, or something of that cort?

A. We cannot always do that. They are sometimes run over only one half of a division, what we call a local district.

Q. But they are run as locals as distinguished from the run of the through trains?

A. Yes, sir.

Q. Are you prepared from your experience in the operation of railroads to state whether there is any difference in the cost or expense of operating local trains and through trains?

A. Yes, sir.

Q. What is the more expensive train to operate?

A. A local freight train, for a great many reasons.

Q. I would like you to state, Mr. McKee, what causes that difference in the cost of operation as between those two classes of trains and the reason why it is more expensive to operate the local than it is the through trains. I would like you to state as fully as you wish, so as to save repeated questioning.

A. Among the reasons I will state a few that occur to me just now.

First, the decreased tonnage loaded in cars handled by the local freight trains,—when I say decreased tonnage, I mean tonnage per car, causes more cars to be used in the local trains handling
1840 the same amount of freight than in the through trains.

That causes the increased cost of the cars and an increased cost for maintaining the equipment.

Switching the cars in local freight trains at almost every station increases the wear and tear of the cars more than on the through freight trains. And materially increases the cost of maintenance of equipment, on that account.

The claims caused by the damage to freight is heavier on local freight trains than on through freight trains, caused by the class of commodity handled, such as merchandise, and in case of derailment it is very much more cost to the company.

Also on account of the switching continuously at stations, causing the damaged claims to arise.

The maintenance of track is considerably more due to local freight trains than through freight trains, because the through freight trains use the main line and passing sidings, except in rare instances that the through freight trains are run, but a very small proportion are run to pick up at industrial tracks.

Therefore, the local freight trains in addition to using the same main line and passing sidings that the through freight trains uses, uses the house tracks, the industrial tracks, and other tracks almost

exclusively, which largely increases the cost of maintenance due to the local freight trains over that of through freight trains.

1841 The cars handled in local freight trains have a class of commodities that are shipped to many different people that it requires to each car ten to twelve times the number of way-bills that it does to a car in the through freight trains. That causes additional work in the way of clerks, agents, warehouse men and laborers at both the starting point and the receiving point. And cuts considerable figure in the cost of handling the cars on local freight trains.

The cost of fuel and other supplies on local freight trains is more than on the through freight trains.

Q. Why is that Mr. McKee?

A. Because they stop so much more. That would apply to coal, oil, waste, danger signals, and other supplies.

There is an increased cost for the wages of train and engine men on the local freight trains over the through freight trains.

I would say we pay as much for running 60 miles on a local freight train as we do for running 100 miles on a through freight train—at least. In some instances more, which would include the regular wages and overtime.

Those are some of the items, Judge, that go to increase the expense.

Q. Is there any difference in the train haul as between the local trains and the through trains and if there is any difference does that have any effect upon the relative cost of operation?

1842 A. Yes, sir, that cuts a very large figure in the cost.

Q. Explain that and I would like to have you explain that fully, Mr. McKee, if you please.

A. Well, if you can haul five times the tonnage in a through freight train for 100 miles by paying less wages to the train and engine men; and less cost for supplies than you do on the local freight train for running 70 miles, if the local freight train running 70 miles on a higher rate of pay and more overtime, and using more supplies in the way of fuel and other supplies, it stands to reason that the train haul cuts a very large figure in the expenses of running the local freight trains as compared with running the through freight trains.

Q. Does that difference which you refer to and which you say "if it exists" in reality exist?

A. It does. That is a very conservative estimate.

Q. What does that condition grow out of, Mr. McKee, that increased efficiency: I suppose you would call that a difference in efficiency of the service of the two trains.

A. You cannot handle the potential of an engine on the local freight train. You handle the commodities that are to be distributed at various stations along the district that the local freight train covers. You have to give them what is termed "a light train." Even if you had the freight you could fill them out with, you would not do it.

Q. Why not?

1843 A. Because you decrease the efficiency of the local freight train. They could not make the time between stations, start and stop quick and do their work in the prescribed time.

Q. You mean the switching?

A. Yes, sir, doing the switching, picking up their train and going to the next stop. They would get only half way over the road before a day's work was completed so far as the men were concerned and a day's work not completed so far as the company is concerned. So we load them light and start them out with merchandise cars and various empties for local points.

Q. Now how is that in respect to the through trains?

A. The through trains, as I explained before, will handle full tonnage in one direction, at least, and you will hold your freight trains until you get your full tonnage. On the other hand, the starting point in handling through freight trains is to first full-load your cars. You increase the efficiency in that respect.

Q. That is the through trains you speak of?

A. Yes, sir. You cannot full-load your cars on the local trains but you full-load your cars on the through freight trains as much as it is possible to do so. Then you give the train the tonnage the engine can handle—and when I speak of the five times difference between the through freight and the local freight I am figuring on the same class of engine, Judge.

Q. You are speaking of train mile tonnage when you say
1844 five times as much?

A. Yes, sir, train mile tonnage or gross tonnage, either.

Q. You said a while ago, the local trains run every working day?

A. Yes, sir.

Q. Do they do that without regard to the loading?

A. Yes, sir.

Q. Do those local trains run on schedules?

A. Yes, sir.

Q. Do they run in one or two directions, daily?

A. Two directions.

Q. You mean one run in each direction between the points between which they are operated?

A. Yes, sir.

Q. And that is without regard to the loading of the cars?

A. Yes, sir. The tonnage on the car in the local trains would not average more than four and one half to five tons per car. The tonnage of a car on the through freight will run from 16 to 40 tons.

Q. Does it average as high as four and one-half to five tons a car on the local trains?

A. I doubt if it would. But that is a conservative estimate to say it would.

Q. By saying "conservative estimate" do you mean that is a high estimate?

1845 A. Yes, sir, a high estimate.

Q. There is also a class of interstate transportation which has been termed in this case "trans-state traffic"; that is, in which

the cars (speaking with reference to the state of Arkansas) pass across the state and are neither loaded nor unloaded in the state.

I wish you would state if you have in mind in speaking of the through trains that class of traffic or the class of traffic which either originates or terminates in the state of Arkansas.

Speaking now with reference to conditions that exist in that state?

A. I couple both together, the trans-state—in fact, I included all through freight.

Q. That is what I understand. When you say through freight you include so far as it refers to trans-state, all classes of interstate freight?

A. Yes, sir.

Q. Have you at any time ever made any test for the purpose of determining the efficiency as between the local and the through trains?

A. Yes, sir.

Q. Along the lines you spoke of a moment ago?

A. Yes, sir.

Q. State what you did in that respect and what it showed?

1846 A. I desired to make a test to ascertain the net train mile tonnage on local trains as compared with those on through, and it demonstrated that there was five times the number of net tons moved one mile on through freight trains that there was on local freight trains, and the tests made on the through freight trains included the locals, which materially decreased what the showing would have been on through freight trains, providing that the local had been held out in making the test for the through freight net train mile tonnage.

Q. When you say "showing" do you mean the showing of expense?

A. The expense would naturally follow.

Q. What lines were those tests made on? In what state and on what line of railroad?

A. They were made in Arkansas altogether.

Q. On what line of railroad?

A. Between Malvern and Little Rock.

Q. Was it on the Iron Mountain?

A. Yes, sir, altogether.

Q. Where did you make it, on what part of the line?

A. Between Malvern and Little Rock, Malvern and Texarkana, Little Rock and Hoxie. Between Gurdon and Camden; between Little Rock and Denning and between Van Buren and Denning; and then on the Memphis division.

Q. Did those parts of the line fairly represent the entire Missouri Pacific in Arkansas?

1847 A. It represented practically all of it, except on the branches.

Q. Will you please state, in view of the differences to which you have referred in the manner of operating the two classes of trains, what in your judgment is the difference in expense of

operation as between local and through trains: in other words, how much greater the expense of operating local trains is than through trains?

A. They cost on an average from four to five times more to operate local freight trains from any standpoint—no, I will not say from any standpoint; I mean, from the standpoint of cost—than it does to operate through freight trains. That is a very conservative estimate. In other words, I would call it low.

Q. That estimate is the result, is it, of your experience in operating railroads?

A. Yes, sir.

Q. Is there a similar division of the service as to passenger trains, as to that which you have spoken of with reference to freight trains? I am not speaking of the cost, now, but am speaking of the division with reference to through and local trains?

A. I don't know that I just catch just what your question is.

Q. I will re-state it:

Do railroads as a rule operate through passenger trains and local passenger trains?

1848 A. Yes, sir.

Q. Now I will get you to define what is a through passenger train?

A. A through passenger train would be from St. Louis to Texarkana.

Q. You mean on the Iron Mountain road?

A. Yes, sir.

Q. And what is a local passenger train?

A. A local passenger train would be one from Little Rock to McGehee; Russellville to Little Rock or Russellville to Fort Smith.

Q. Are trains run in that way on the Iron Mountain in practice?

A. Yes, sir.

Q. Is there any difference in the cost of operation between local and through passenger trains?

A. In Arkansas?

Q. Yes.

A. Whenever you run a local passenger train a short distance you have two terminals, you know, to take care of. Take the case at Russellville, we run that train from Little Rock to Fort Smith, we would get away with considerable terminal expense at Russellville and also they would make less engine miles. In other words, use less engines. It takes more engines to run local passenger trains, comparatively to the mileage, than through passenger trains.

1849 Q. Do those differences result in any differences in the cost of operating the two classes of trains?

A. Yes, sir.

Q. Which is the more costly?

A. The local passenger trains are more costly.

Q. Are you, from your experience in operation, prepared to state whether there is any difference in the expense of transporting local passengers as compared with through passengers?

A. Yes, sir, the through passenger gets on the train and goes through. The local passenger rides only a short distance.

Q. Is there any difference in the terminal expenses with regard to the two classes? Where the through passenger is an interstate passenger and the local passenger is an intrastate passenger?

A. Yes, sir, there would be the difference of the agent's work selling the tickets and checking the baggage and receiving the baggage at the stations if there is any. It would be a large cost. And there is extra engines used and extra equipment used. In other words, it is lying "dead" all night long, which does not enter into the through passenger service.

Q. And all that difference enters into the two classes of passengers?

A. Yes, sir.

1850 Q. Speaking of the difference a while ago in the cost of operating the two classes of freight, I do not recall that you made any statement in regard to the difference, if any, in the frequency of stops: is there any difference in the frequency of stops of the local and the through trains?

A. Yes, sir.

Q. Is there a difference in cost?

A. Yes, sir.

Q. Does either the through or the local passenger train, and if so which stop more frequently?

A. The local train stops much more frequently than the through train.

Q. Is there any difference in the expense involved in that?

A. Yes, sir, the wear and tear on the equipment and the cost of the fuel.

Q. Are you prepared to make an approximate statement as to the difference in cost of transporting interstate and intrastate passengers?

A. No, sir.

Q. You do, however, say there is a difference, and that it costs more to transport local than interstate passengers?

A. Yes, sir.

Cross-examination.

By Mr. HILL:

1851 Q. Are you using the term "interstate passenger" as equivalent to through passenger?

A. Yes, sir.

Q. And you are using the term "intrastate passenger" as the equivalent of local passenger?

A. Yes, sir.

Q. That is a passenger carried on the local train as contradistinguished from a passenger carried on the through train?

A. Yes, sir.

Q. There are a great many passengers carried on local trains to

the next divisional point or larger town and then they get on the through trains?

A. Not very much, in Arkansas. We do not carry that as extensively in Arkansas as in the eastern states.

Q. I do not catch that.

A. That does not apply to Arkansas as much as in other states.—That is, to run "pick-up trains" for the through trains.

Q. There is a great deal of travel of that kind in Arkansas?

A. Not very much.

Q. On the main line?

A. One or two trains there, but it is not as extensive in Arkansas as it is east of the river.

Q. I believe it is in evidence here that on the main line the train stops only every 35 miles. I mean the through trains.

1852 A. That probably is correct. I have not figured that.

Q. You take that distance of 35 miles, wouldn't there be a lot of local passengers that would have to be picked up by the local trains, that are going to make interstate journeys?

A. My experience in Arkansas is that the local trains carry*ing* state passengers and very few interstate passengers; and that the through passenger trains do carry some intrastate passengers.

Q. How do you know what are state and what are interstate passengers on those trains?

A. Take the line from McGehee to Little Rock. The interstate passengers average on that line going into Louisiana about three to a train.

Q. How do you know that?

A. Because I have checked it up.

Q. Was that the test you spoke of?

A. No, sir, that check was made for another purpose, and not for this purpose at all.

Q. When was that check made?

A. About a year ago that test was made.

Q. Can you give the figures on it?

A. No, sir, we just checked it to find how many passengers were going to Louisiana.

Q. Just one train?

A. Six trains going into McGehee.

Q. Did your check extend along the line only from Mc-

1853 Gehee to Little Rock.

A. Altogether, yes.

Q. Did you go over any other part of the main line?

A. No, sir, that was one place we checked it. That is the one place I know of.

Q. What did you say the proportion was?

A. There were about three passengers on that train, on the average, that went into Louisiana.

By the way, they did not all go into Louisiana. They went to Lake Village. I mean south of McGehee—let me see, I don't believe it averaged one. There was Lake Village and McDermott.

Q. How many trains did you take, just one?

A. We checked the night train and the day train, too.

Q. Two trains then. How long a period did you check that for?

A. The night train we checked, I think we took two months. We paid more particular attention to that because there was a longer wait between the trains.

Q. During those two months what proportion of your passengers were interstate and what proportion were intrastate?

A. Going into McGehee on that train there were not any interstate.

Q. Going into it from Little Rock?

A. No, sir. And going back there was not any interstate
1854 on that particular train. Now on the through train that went in there at midnight, it averaged three that went through.

Q. It averaged three?

A. Yes, sir.

Q. How about the line up to the Fort Smith branch?

A. My opinion is that up on the Fort Smithe branch there would be a very small proportion of those interstate, except the line from Russellville to Fort Smith, that would go around by way of the Cherokee Junction.

Q. They would be all interstate?

A. Yes, sir. I judge you know that is correct, because there was quite a dispute about it, you know.

Q. I don't think there was much dispute about it.

A. Oh, there was a big dispute about it.

Q. I thought you meant in this case? It is not disputed here?

A. Oh, no.

Q. That is about half the travel there, two trains each way. Or is it as much as half, going via Cherokee Junction?

A. I do not understand you there. Half the travel on the Fort Smith branch?

Q. Yes. You run two passenger trains across the bridge and the balance of your trains are run by Cherokee?

A. Let me see if I understand what you want.

Q. I understand you run a passenger train each way across
1855 the bridge; that would be intrastate traffic?

A. Yes, sir, our bridge.

Q. No, across the Van Buren Bridge. Your other trains you run through Oklahoma and that makes it interstate?

A. We switch that around so there is no regularity about that. We run them so as to use up the minimum expense we are required to pay.

Q. It is in evidence here, and I assume correctly from your people here, that they run just two trains each way on the Van Buren bridge?

A. On the bridge?

Q. Yes.

A. One each way. Is that in evidence here?

Mr. MOORE: I don't think so.

Mr. HILL: Ask Mr. Johnson or Mr. McPherson.

Mr. McPherson: One each way.

Mr. Moore: He understands you to say one train a day each way out of Fort Smith?

Mr. Hill: I am talking about the Van Buren bridge.

Mr. Moore: I think that is in evidence.

Mr. Hill:

Q. All of those except those two trains would be interstate there.

A. Those we have mentioned?.

Q. All that go into Fort Smith except on those two trains would be interstate passengers?

A. I suppose they would, Judge.

1856 Q. On those other trains that go into Fort Smith, that cross the Van Buren bridge, they would be a great many of them interstate going to other points?

A. Of course you are familiar with that, Judge, but I think you will bear me out in saying that at Fort Smith the identity of the train is practically changed; everybody gets out and a new crowd gets on, you know.

Q. That is largely the case. But you will find a great many of them going on through into Oklahoma, that is from my observation if it is not yours. Don't you know a great many go through?

A. Not very many. They may lately.

Q. A large proportion get off, of course. You are right about that.

A. I was more familiar with it when I was Superintendent.

Q. You know there is quite a considerable through traffic that passes through the state line, I mean?

A. I did not know it, no, sir. My idea would be that that train largely changed identity there; one crowd gets off and another gets on.

Q. How is it down about Texarkana?

A. At Texarkana——

Q. You have a great many interstate passengers down there on your local trains?

A. On local trains?

Q. Yes.

1857 A. No, sir, I don't think we do. I think the local trains in Arkanasas—but it is only a very small proportion of the passengers, that are interstate.

Q. Have you ever had any figures made on that, to know?

A. I have rode the trains?

Q. You take it from your observation, then?

A. Yes, sir.

Q. You never had any statistics compiled from the train auditors?

A. No, sir.

Q. And you are basing your evidence on just your observation?

A. You say train auditors—I have. I frequently, in fact every time I was on the train there I would find out from the train auditors where the passengers were from and where to.

Q. You would check up how many were interstate and how many state?

A. Well, I would get that information but not for the purpose of finding out whether they were interstate or intrastate; but I did get that information by getting after the record I wanted. There were a number of passengers on the train, and I would find out where they were from and where they were going to. I wanted that for my own information and I got it and as I told you I got it pretty near every time I was on the passenger trains.

1858 Q. You would not know whether they were interstate or intrastate?

A. Except the knowledge I got bore out that the largest number of passengers on the local trains in Arkansas were intrastate.

Q. You say the largest number: what proportion would you say?

A. Not only that but a large number on the through trains are intrastate.

Q. Give us your best judgment on the proportion of intrastate and interstate.

A. On which train?

Q. On both of them.

A. To McGehee?

Q. I am speaking of the state as a whole.

A. The state as a whole?

Q. Yes.

A. I would say there was not five per cent—I do not want to go into percentages much.

Q. Give us your best judgment.

A. That would be my best judgment.

Q. Five per cent. But what are you applying that to?

A. I mean if a passenger gets on at Gurdon and buys a ticket to Little Rock and gets off at Little Rock and buys a ticket for St. Louis, he is an intrastate passenger until he gets on the train at Little Rock; he was an intrastate passenger from Gurdon to Little Rock.

1859 And I will state that I believe that not more than five per cent of the passangers, from my standpoint, the way I have explained it, on the local trains in Arkansas are local passengers.

Q. What per cent of the intrastate passengers do you think are on your through trains?

A. That would be harder for me tell you and I don't believe I could tell you that. I don't know. I would not want to say that. I would have to think that over some. I am not familiar with that.

Q. Take the illustration you just made, of the man getting on at Gurdon going to Little Rock on the local and then getting on the through train going to St. Louis. Might not that man buy a ticket at Gurdon for St. Louis and ride on the local to Little Rock there get off the local train and get on the through train and go to St. Louis?

A. Then he would be an interstate passenger, in my opinion.

Q. And he would be an interstate passenger from Gurdon?

A. Yes, sir, in that case. But that was not the kind of a case I referred to. He would get off at Little Rock, go up town and do some trading or do some business there and then come on down town and take the night train for St. Louis. Maybe when he got off the train

in the morning he did not intend to go to St. Louis and perhaps he did.

Q. You have explained your idea about the local passenger
1860 train carrying principally intrastate passengers; now what about your local freight trains? What per cent of intrastate traffic do you think it carries?

A. Well, I would not want to state any particular percentage. I think it is a small amount. But I will say this, Judge, that whatever interstate freight is handled on the local freight train in Arkansas, it reduces the cost of the local freight train in the interests of the intrastate freight.

Q. You mean the proportion that you would charge to intrastate?

A. I mean this: that if there is any interstate freight you handle on the local train in Arkansas, it helps the intrastate in making the cost of that train.

Q. What do you mean by "helps it?"

A. I stated that you can handle five times the amount of freight on a through freight train that you can on a local. Now, you take the interstate freight off the local train in Arkansas and you can handle a good many more than five times as much on your through freight. That is including your intrastate that I made those figures on.

Mr. KIRBY: If you would take the local freight off, you would have to run a local to carry that. You would not have a local freight on it either way, in that proposition?

A. There is a very small amount of that, you know.

Mr. HILL:

Q. Did you ever make any freight train tests to find out the
1861 proportion of interstate and intrastate freight carried on the local train.

A. No, sir, I did not.

Q. Or on a through train?

A. No, sir.

Q. What is your idea about how much intrastate freight is carried on the through trains?

A. Intrastate on the through trains?

Q. Yes.

A. Compared with the whole of the through trains, a very small proportion.

Q. I mean how much of the——

Mr. MOORE:

Q. What was your statement there?

A. Compared with the whole freight handled on through freight trains.

Q. You mean freight traffic?

A. What is the difference between through freight traffic and other through freight trains?

Q. One relates to all traffic and one that particular train.

Mr. HILL:

Q. I do not believe you understood me. How much of the intrastate traffic is carried on the through trains?

A. In Arkansas?

Q. Yes, in Arkansas?

A. I don't know, but I should say so far as less than car-
1862 load stuff is concerned, very little.

Q. What is that?

A. I should say, so far as less than carload stuff is concerned, very little.

Q. I did not ask you about less than carload. That is only about four percent of the business. I am talking about intrastate freight traffic in Arkansas.

A. How much of it is handled on through trains?

Q. Yes.

A. I don't know how much is handled on through trains.

Q. What is your best judgment. You have given us a great many experiences here and I would like to have your experience on that proposition.

A. Yes, and if I had known you were going to ask that, when I was down there I would have made a test for you.

Q. You never have made any tests of that?

A. Not of that, I did not.

Q. You cannot even approximate that?

A. Let me see if I could. (Witness pauses.) No, sir, I could not.

Q. Take the other proposition: How much of the interstate traffic is carried on the local trains. I mean by that, what percentage of the interstate traffic is carried on local trains?

A. I would say it is so small it is hardly a mathematical problem.

1863 Q. I want to follow that up with this: What percent of the ton mileage of the local train is interstate freight?

A. That varies, you know.

Q. Give your best judgment.

A. My judgment is, that a very small percentage of any local freight train, in either direction, out of Little Rock or between Camden and El Dorado, in fact from the state line of Missouri through to the state line of Texas, and through to the state line of Louisiana, a very small percentage of that is interstate that is handled on locals, for the reasons I have already stated, that the people in that vicinity patronize the wholesale men in Little Rock.

Q. Which road carries a larger percentage of interstate on its local trains, the Iron Mountain or the Cotton Belt?

A. Well, I can only answer—you see I have made no investigation on the Cotton Belt but if you want my individual opinion——

Q. That is what I am asking for.

A. My individual opinion about it would be that there would be more interstate freight carried on local trains on the Cotton Belt than on the Iron Mountain, because they have not Little Rock set in the middle of their territory to draw from.

Q. You have made no tests, I understand. This is just your best judgment you are giving on these propositions?

A. Yes, sir, that is right.

1864 Q. What was this test, you told Mr. Moore about a while ago. I did not quite catch the extent of that and what it covered?

A. That covered the net train mileage on local freight trains compared with the through freight trains.

Q. Covered what?

A. The net train mile tonnage.

Mr. MOORE:

Q. Explain what you mean by that.

A. The net tons moved per train mile.

Mr. HILL:

Q. When did you make up that test?

A. It was just after the time or during the time that that hearing was held at St. Paul. I had made an affidavit from my best knowledge at that time, and I wanted for my own information to find out some facts in connection with it, and I made the test.

Q. Have you the result of your examination of those trains?

A. I have in my head. I made it through the officials.

Q. Have you put it on paper?

A. No, sir.

Q. What became of it?

A. I did not need it. I got the figures from the local officials and figured out the net ton mile tonnage.

Q. You did not preserve any memorandum of it?

A. If I did I don't know where it is. What the memorandum would be would not do anybody any good because it was

1865 simply dividing figures, you know; that was all.

Q. You have not it in shape where we could take your calculations and run through them?

A. No, sir, but I will give you any information you want about them.

Q. Explain in just what shape it is?

A. I will tell you how that is done, Judge. You take it on the local from Little Rock to Malvern. The train master was told to make a test on a day that was a good average. I did not want a low day and I did not want an abnormally high day but I wanted it to be a fair average for the year. These men ride up and down every day on those trains and know what a fair average would be. I said I want the tons between this station and that station; between this station and that station; and so on, until I get to Malvern. Give me the tons. I then reduced that to tons going one mile.

Q. It was simply the statistics of the tonnage moved between those stations?

A. Yes, sir, the tonnage movement, which resulted in obtaining the net tons per train mile.

Q. Did your train master get you the tonnage figures from the wheel reports.

A. No, sir. From the way-bills.

Q. You made no record of that but it was just information conveyed to you for your own information and guidance?

A. Yes, sir.

1866 Q. In forming your opinion?

A. Yes, sir. Now when you say I made no record—I made figures on there and I don't think you will find them down there. But possibly you may. I hope you will if they are there. There is nothing to hide about it at all.

Q. As I understand your testimony, Mr. McKee, to sum it up: you think the local freight train is more expensive of operation than the through freight; and the local passenger than the through passenger?

A. Well, I want to say about that local freight train, that I not only think it but I am positive of it and I know it from experience, that it is not only more, but four or five times what it is on the through freight train. It costs four or five times more to run a local freight train than a through freight train.

I know it costs more to run a local passenger train, on account of the terminals and the loss of equipment and the loss of power; but I am not prepared to give any percentage or figures of that character about it.

Redirect examination.

By Mr. MOORE:

Q. I just want to ask you one question.

How many local freight trains are scheduled or run each way per day on the Iron Mountain? Is there more than one?

A. In what territory?

1867 Q. In the districts in which the local trains operate.

A. No, sir, only one in each direction.

1868 CHICAGO, ILL., *January* 26, 1910.

Met pursuant to adjournment as above, on Wednesday, January 26, 1910, at the same place.

Present, parties as before.

The following proceedings were had.

EDMUND D. SEWALL, a witness of lawful age, being duly produced, sworn and examined, in behalf of the Complainants testified as follows, to-wit:

Direct examination.

By Mr. J. M. MOORE:

Q. Please state your name in full?

A. Edmund D. Sewall.

Q. State where you reside and what your occupation is, please.

A. I live in Chicago, and have been in the railroad business. My title is Assistant to the President of the Chicago, Milwaukee & St. Paul Railway. I am also Vice President of the Chicago, Milwaukee & Puget Sound Railway Company.

Q. How long have you been engaged in railway service?

A. I have been with the Milwaukee Company since 1882.

Q. I mean since the beginning of your experience?

A. Prior to that time I was for a few years in the Civil Engineering Department of the Great Northern, Northern Pacific, and other roads.

Q. You say you were in the service of the Chicago, Milwaukee & St. Paul in 1882?

1869 A. Yes sir.

Q. What capacities have you served in in connection with that road?

A. First, as local agent, at Stillwater, Minnesota; next, traveling lumber agent; next as commercial agent, at St. Paul; then assistant general freight agent, Milwaukee; then general northwestern agent, at Minneapolis; then assistant general superintendent, in charge of the northern district, Minneapolis; then assistant to the president.

Q. What mileage was embraced?

A. About 3,000 miles in the northern district, including all lines in Minnesota; North and South Dakota, except the Sioux City & Dakota Division; that is the line along the north tier in Iowa—what we call the Dakota Division, that runs along the Mississippi River on the east side of the state of Iowa.

Q. What was your position subsequent to the time you——

A. Assistant to the president.

Q. Have you had occasion to give any attention and study to the question of the operation of the different classes of trains that are used in transportation, local trains and through trains?

A. Yes, sir; I had particular charge of that work as Assistant General Superintendent, in Minneapolis, in that northern district.

1870 Q. Did you become familiar with the difference in the manner of conducting local or intrastate business, from interstate business?

A. Yes sir.

Q. I will try and use the term state, instead of intrastate, so as to shorten the terms and avoid confusion.

Mr. HILL: I object to the way you put that question: you say "local or intrastate." I do not think this witness has held them to be synonymous terms, or any other witness. I think it would be misleading.

Mr. MOORE: Let his answer stand.

Q. Then do I understand you to state, if there is a difference between local and intrastate traffic—do I understand that your observation has covered that entire subject and branch, whether local or intrastate?

A. Oh, yes.

Q. Mr. Sewall, I wish you would state, in a general way, what the differences are in the manner of conducting interstate traffic and state traffic, growing out of the difference in length of haul, the tonnage, the character, and the manner of loading, that exists as between

freights that are hauled upon interstate trains and those that are hauled upon intrastate trains.

A. The principal points of difference are the tonnage of the trains and the length of the haul.

1871 Our trains which do the local work (which we call way freights), have from perhaps 60 to 75% of the tonnage of our through trains, under the most favorable circumstances, and from 50 to 60% of the net tonnage of our through trains. The lighter loading of the cars in the way freights of course reduces relatively the net tonnage in the train.

Q. What is the principal use made of those trains that are run over limited districts or divisions, and carry largely intrastate traffic? I mean with reference to the distribution of freights?

A. Those are the trains that handle merchandise, for instance, from the principal jobbing points to the smaller stations, and such carload freight as there may be for those stations.

Q. They are distributing agencies, are they not, rather than——

A. Yes, that is their function.

Q. Have you found that there is any difference in the expense of handling the local state traffic and the through interstate traffic?

A. Yes, sir, there is a very great difference.

Q. Which kind of traffic is the more expensive to handle?

A. The local traffic.

Q. I will be glad if you will state what causes that difference, and give such elements as occur to you, of the difference in the manner of conducting the two kinds of traffic, that go to make up the difference in expense.

1872 A. In the first place, the wages of the engine and train men are greater on the local than on the through trains. The fuel and other supplies consumed are greater per ton mile, than on through trains.

The average length of haul on our local trains is probably not more than one-fourth the haul of our through trains. The lighter tonnage I have already referred to. The unloading of way freight upon station platforms by the train men, is a very expensive way of handling it, in actual cost, and also because of the risk of damage. Of course the risk is much greater in unloading from a car floor to a low platform, as it is usually handled, than it would be to take out of the car to the truck in a warehouse, as it is handled at terminal stations.

The way freights make more than one stop at most of the stations for which they have freight to unload, because, with all the cars that may be taken in loading, there will be freight in more than one car, for the same station. It is not an uncommon thing to have freight in ten cars, for one way station, if it is a station of any prominence, and we have to stop the train for each car. Of course it occasionally happens that two cars may be next to each other, but as a rule they will be in different parts of the train and we will have to make a move of the train for every car from which freight is unloaded.

The way freights make use of industry tracks at stations, and

do some switching there, which, of course, the through
1873 freights do not.

One of the items is the cutting of crossings of freight standing at a station. Most of our stations are adjoining a highway, and, for the convenience of the public, and in all the states through which we run, the laws require that the highways be left open; so if there is any considerable amount of way freight to be unloaded, the car must not only be stopped at the station, but the highway must be cut, and when that train is unloaded that process must be repeated if we have other cars for the same station.

One of the great items of expense is in the use of cars. It will take perhaps four times as many cars to cover the same ton mileage of way freight, as would be required in through freight service.

The delay in loading and unloading the cars is the same whether the haul is short or long, and of course the ton mileage is in direct proportion to the length of the haul.

There is a considerable element of expense in connection with starting and stopping trains. A considerable share of the repairs of cars results from the application of brakes, which, of course, is increased in proportion to the number of stops the trains make.

I think that covers the principal items.

Q. Are the conditions that you have enumerated in answer to the last question, such as commonly exist on all through lines of interstate railroad carriers?

1874 A. They are.

Q. Have you ever operated in territory south of the Missouri and west of the Mississippi River: in other words, in Arkansas and adjacent territories?

A. No sir.

Q. But you state that the conditions you speak of are such as are general and apply to all through lines of railroad?

A. They are.

Q. Have you made any estimates or calculations for the purpose of ascertaining what the amounts of these differences are on the lines of road you have operated, so you can give us any information in that connection?

A. I made investigation one time, with special reference to the terminal expense, and the result was that the terminal expense on way freight was about 8½ times the terminal expense on through freight.

Q. You spoke a while ago about the difference in cost on account of the switching: what are the characteristics of switching, connected with state service, that causes an increased cost there? Can you describe them?

A. There is more or less carload freight handled on way freight trains, which has to be set out at the station to which it is consigned, and of course there is an occasional car picked up at those stations to be taken forward to its destination.

1875 A. I am speaking of the intra, and not the interstate.

A. Well, way freights do that class of work between the

terminals. Of course much of the business that they pick up is interstate.

Q. Are there more or fewer sidings used by the local trains that transport the greater amount of intrastate freight than through?

A. There are more used by the local trains.

Q. That is what I asked you?

A. Yes sir.

Q. What sidings are usually used by the through trains?

A. They use what are called passing tracks, if they take a siding at all; but through trains, of course, do not stop at every station.

Q. What tracks are used by the local trains?

A. They use the industry tracks, and other sidings, if there are other sidings at the station where they stop, and occasionally use the passing track also.

Q. Without going further into detail in the matter, Mr. Sewall, I will ask you to state what, in your judgment, based upon your experience and railroad operation, is the difference in the cost of handling state and interstate freights.

A. In my judgment, it costs at least four times as much to handle state traffic as interstate traffic.

Q. At least four times as much?

1876 A. Yes, at least four times as much.

Q. Have you given any investigation to the subject of passenger traffic, and the difference which exists between the interstate and state business?

A. Yes, some consideration.

Q. I would be glad to have you state your views, as to whether there is a difference in the cost of transporting local or state passengers, and interstate passengers.

A. There is a decided difference.

Q. What does that difference grow out of?

A. The density of the travel and the length of the haul, on an average, of the passenger carried.

Q. What would you say is the difference, in figures, as near as you can approximate it?

A. The local traffic, in my judgment, costs at least fifty per cent more than the through passenger traffic.

Q. To go back to the transportation of freight for a moment:

The records in this case show that the average length of haul in the state of Arkansas, on one of the lines engaged in this litigation, is 70 miles on state freight, and 224 miles on interstate.

In another it is, 42 for state freight, and 231 for interstate.

How does that difference in the length of hauls compare with the difference that exists on lines that you have been familiar

1877 with?

A. I have not the exact figures on that, but in my judgment, the interstate haul is at least three times the state haul.

Q. And it has been about that on the lines you have operated?

A. Yes sir.

Q. In that respect the differences would be somewhat similar, perhaps; the difference a little greater than in Arkansas?

A. Yes sir.

Q. I will ask you also to state what the average tons hauled, per car, is in state and interstate movements?

A. If you will excuse me, I will refresh my memory by a little memorandum that I have. I had occasion to compile some figures in a case before the Minnesota Commission about three or four years ago.

(Witness refers to paper).

The average weight of the contents of 5,889 cars of less than carload way freight, loaded at Minneapolis during three months, was 3.6 tons.

Mr. HILL:

Q. Less than carload?

A. Less than carload.

The average weight of 12,223 cars of carload freight, loaded in Minneapolis during the same period, was 23.1 tons.

1878 Q. Do the local way trains run as many miles, per day's work, as the through trains? Just state what the conditions are in that respect.

A. Not in the same number of hours. As a rule our way trains cover a division. We have some places where they cover part of a division and come back to the original starting point, but as a rule they will go from one division point to another. They will be a good many more hours in covering the distance than the through freight will. That runs into overtime, very frequently, which is a very considerable item of expense.

Q. Please explain how it runs into overtime and what effect the overtime has.

A. The wages of train and engine men are based on 100 miles of service, or ten hours of service. If the length of the run is 120 miles, they are paid for that, if they make the run in 12 hours and 30 minutes, or less; if more than 12 hours and 30 minutes on the road, then they are paid by the hour, at the rate of 10 miles an hour.

The overtime is frequently as high as 15% of the total cost of the wages of train and engine men.

Q. How does the rate of wages paid to crews and engine men on the two kinds of trains compare?

A. We pay higher wages on the local trains; it averages about 20 cents per day for engineers; 15 cents for firemen, and about the same for conductors and brakemen.

1879 Q. Mr. Sewall, what effect does the difference in the efficiency of locomotives in train haul have upon the cost of transportation? You referred to that a while ago.

A. Well, if you reduce the efficiency of a train 50%, it just increases your expenses—or rather, doubless your expenses; that is, the expense incident to the handling of the train.

Q. You spoke also, I believe, of damage to trains: I wish you would state what the comparative damage to equipment, in the two

methods of operation, or state and interstate. I mean, what it consists of; not dollars and cents, but how it occurs and is brought about?

Mr. HILL: I object to the "two methods of operation, or state and interstate". No witness has ever testified in this case to any such methods as that.

Mr. MOORE: The question may be stricken out.

Q. I believe you have stated already that there was a difference in damage to equiqment, growing out of the methods of handling these local way trains and the interstate trains: I wish you would state how that occurs; what is the cause of that difference?

A. The greater consumption of fuel——

Q. Damage to equipment?

A. Oh, damage to equipment. That is the result of the application of brakes—the shock that comes from stopping and the shock which comes from starting.

1880 Q. Is there any difference in its effect upon the structures, increase in the cost of maintenance of way, for instance, by the method of handling the local trains?

A. It might be a little more expensive, the way the local trains are handled.

Q. The larger number of tracks and——

A. Whatever tracks have to be maintained for local trains, that are not used by through trains, would be a direct element of expense.

Q. Now, Mr. Sewall, I believe you have stated that there is more switching done by the local trains than there is by the through trains: what effect does that have upon sidings and that portion upon which the switching occurs?

A. They increase the wear and tear—the cost of maintenance and renewals, and also of equipment on the train.

Q. What result does it have upon the locomotive?

A. It increases the wear and tear and cost of repairs; coal consumption and water consumption.

Q. How does the amount of claims for personal injuries growing out of the operation of local trains, compare with through trains?

A. Personal injuries would be greater on the local trains in consequence of the switching that is performed in connection with which most personal injuries to employés arise.

Q. Now, is there any greater exposure to injury in the case of local passengers, state passengers, than there is interstate passengers?

1881 A. The damage is greater with local passengers. There is more getting on and off of trains; that is where the damages occur.

Q. How does the terminal expense of the two classes, as between through and local trains, and the handling of state and interstate freights compare?

A. It is very much greater on the local trains. As I testified before, the terminal expense on less than carload freight is about 8½ times the terminal expense on carload freight.

Q. Excuse me for calling it up again. I had overlooked the fact that you had gone over that.

Cross-examination.

By Mr. HILL:

Q. Mr. Moore has been putting questions to you about state traffic and interstate traffic, and I have understood by your answers that you have been answering about traffic on local trains and traffic on through trains: is that right?

A. Yes; my answers as to local trains would apply to state traffic.

Q. Do you think the local train is synonymous with state traffic?

A. We designate our local trains as way freights, and the way freight is a regularly scheduled train running six days in the week, and sometimes seven, between certain terminals; that is, over
1882 a division, distributing the merchandise from the jobbing centers, and such carload freight as may be shipped to local stations.

Q. Is that all intrastate traffic that it handles?

A. Not all intrastate, because it may carry some freight that was received from a point without the state; they may also pick up some freight at local stations, carload and otherwise, that goes to a point without the state.

Q. It is possible for those way trains to pass the state line, is it not?

A. Yes, it is possible.

Q. And do they not do it?

A. In some instances. Of course whatever interstate freight they carry reduces to just that extent the expense of handling the state freight, because it increases the tonnage of the train.

Q. When you spoke of interstate traffic, in answer to Mr. Moore's questions here, as I understood you, you were referring to through trains?

A. Through trains, yes sir.

Q. Those through trains carry interstate traffic, too, do they not—I mean, intrastate traffic?

A. Some, yes; it depends on the length of the run.

Q. If you take Arkansas, with a large distributing center in the middle of the state, at Little Rock, you would expect on your through trains to have a large intrastate traffic?
1883 A. I don't know anything about the conditions down there.

Q. I am stating a situation to you, that you know, geographically, to be true: would you not expect there a large intrastate traffic on through trains, out of Little Rock, the largest distributing point in the state?

A. Not on through trains; not if they operate as I suppose they do there. Let me illustrate a case of our own, which shows how we handle it, and which is the basis of my statement:

Our Hastings & Dakota line runs from Minneapolis to Aberdeen; our first division point is Montevidio, Minnesota. A through freight will start out at Minneapolis with nothing for any point east of

Montevidio; the business between Minneapolis and Montevidio will be done by the way freights; west of Montevidio (if it has loads for stations west of Montevidio) between there and Aberdeen), they are sent out at Montevidio and taken by way freight from Montevidio the next——

Q. How do you define the through train, as you are referring to it in your testimony?

A. One that does no local work between terminals.

Q. Does it not handle both classes of traffic, state and interstate?

A. Yes, but very much more interstate than state.

1884 Q. That might vary in places, might it not?

A. Yes, it does vary in places, but that is the general situation.

Q. Now, all your testimony that has been given heretofore, has not been in relation to state and interstate, but has been in relation to through and local?

A. No sir, in connection with state and interstate.

Q. Let us get that clear now: I understand these expenses that you put there as four times, was on local trains as against through: is that right?

A. Yes sir.

Q. You are treating that as synonymous with state as against interstate?

A. Yes sir.

Q. That is, you are disregarding the amount of interstate traffic of the local train, and disregarding the amount of intrastate traffic of the through train?

A. Yes sir.

Q. I believe you stated a while ago that you did not know the conditions in Arkansas?

A. I did.

Q. Do you know from your railroad experience, how cotton is handled?

A. No sir.

Q. I will state it to you, and if I misstate it, I will ask these gentlemen to correct me: from what appears in this record;

1885 cotton is gathered from plantations and small points and carried on a way freight to the nearest compress point, where it is unloaded and compressed; after compression it is reshipped, usually to the seaboard.

The rate given it is the rate from the first point of origin, to its ultimate destination—the milling in transit proposition applied to the cotton condition; they call it concentration, I believe.

That is all interstate freight, owing to the fact that there is no consumption of cotton in Arkansas, except a negligible quantity, and it is shipped on the through rate. Now, it is handled, as I have indicated, from point of origin to the nearest compress point, on a local, and then at that compress point (which will usually be a town or division point), is unloaded on a through train for the east.

In view of this statement of the facts, how many terminal handlings would that cotton have?

Mr. MOORE: Counsel assumes that the facts stated in this question, and has on former occasions assumed that facts stated in certain questions put to witnesses are conceded.

Mr. HILL: I did not say conceded, I said proved; at least I intended to say that. I am not asking any concession.

Mr. MOORE: Is it not correct that many of the elements that are embodied in these questions are conceded, or that we concur in the view that they have been proven? I just want to put them

1886 in——

Mr. HILL: If there is anything about that incorrect in the testimony so far, I want you to pick it out.

Mr. MOORE: I don't think you have proven those things as broad as you state you have.

Mr. HILL:

Q. Assuming that they have been proven as I have stated to you, Mr. Sewall, how many terminal handlings of that cotton would there be within the state?

A. I should say one.

Q. Where would that be?

A. At the compress, would it not?

Q. Would there not be a loading of that cotton there—would that not be a terminal handling to begin with?

A. Not what we ordinarily consider a terminal handling.

Q. What do you consider a terminal handling?

A. The handling that is done at a division terminal.

Q. Would you consider the terminal expense then unless it occurs at a division terminal?

A. No sir, the switching that is done at a local station in picking up a carload of cotton, or a carload of anything else, is part of the expense of running that train. We so consider it.

Q. I thought you said there was more terminal expense on these local trains, than there were on the through?

A. Yes, I say so.

Q. You are referring to the terminal expense at division points only?

1887 A. At division points only, yes.

Q. Then you do not consider it a terminal expense if a shipment is made from a place, put on the cars, carried seventy miles, and put off at another station: you would not consider any terminal expense on that shipment at all?

A. No, if it was loaded and unloaded in the way—not in the ordinary sense in which we use the term terminal expense. Perhaps I can explain myself to you a little more clearly as to the question of terminal expense:

At the time these figures were made up, which was in 1906 as I recall it—I have not the exact date here, it cost us to handle merchandise in our Minneapolis warehouse, in the freight house, 31.9

cents per ton, less than carload. It costs a good deal more than that now.

It cost us to handle out freight, 29.9 cents per ton.

Q. Is that still less than carload?

A. Yes sir. Carload freight, 2.9 cents per ton. The expense of the billing of the less than carload was 4.2 cents a ton, and billing carload freight was 6/100 cents per ton.

Q. That applies both to state and interstate freight, does it not?

A. That expense would be the same on the same kind of freight, whether destined state or interstate.

That made the expense per ton of merchandise, switching, 27.8 cents—I took that arbitrarily at $1.00 a car as representing
1888 the bare cost and divided it by 3.6 tons—handling, 29.9 cents; billing 4.2 cents, made 61.9 cents per ton for terminal expense on less than carload freight.

In the same way, carload freight, 43 cents for switching; 29 cents for clerical work in the yard, and 6/100 cents for billing, making a total of 72.06 cents.

Q. Now coming back to our cotton: suppose a bale of cotton was loaded on way freight at London, Arkansas, and carried to Russellville, Arkansas, five miles distant, at its compress: what would you say as to the terminal expense on that handling?

A. If there is a bale of cotton I would not say there was any terminal expense.

Q. In making estimates or cost of handling local traffic, you would not count any cost attendant upon the handling of it except in division points?

A. That is what we consider terminal expense.

Q. These gentlemen heretofore on the stand have been educating me to believe that there was a terminal handling whenever any freight was put on a train, car picked up, or whether it was put off a train, or car dropped out.

A. That is quite true, but I distinguish between terminal and handling. There will be cost of loading and unloading with anything on the train.

Q. Would you count that as an item of expense?

A. Most certainly.

1889 Q. Every car that goes through a division terminal would have some expense, would it not?

A. Some, yes.

Q. What would you call that, a terminal or handling expense?

A. That would be a terminal expense if performed by yard engines; say a carload of freight is going through; if it is handled by yard engines, it would be a terminal expense.

Q. What is the usual way?

A. We always handle it the latter way when we can, but unfortunately, the conditions are such that we cannot always do it.

Q. Now, going back to our cotton movement. It seems we are driving at the same thing, under different names. You call that a handling expense that I have been referring to?

A. Yes sir.

Q. There would be three handling expenses of that?
A. You mean the loading, unloading and reloading?
Q. Yes.
A. Yes, if it was reloaded by the Company.
I don't know about your arrangements, whether you consolidate in small lots and ship in large cars——
Q. That is what we do—loaded by the compress, but that would be the same way with any other industry; is it not loaded by the industry?
1890 A. Carload freight?
Q. This all goes out carload; comes in less than carload and goes out less than carload; I think that is the usual way; then you would have two handling and one terminal expense, would you not?
A. Yes, one would be in less than carload lots; the Company would unload it, I assume.
Q. If you had a large volume of such traffic as that on the way freights, you would not regard the way freights as if they took interstate rates, and classed as interstate freight; you would not regard toe way freights as anywhere near synonymous with intrastate freight, would you?
A. You mean if the majority of the business was of that kind?
Q. I did not say a majority; I say a large volume of cotton?
A. If handled on way freights, I would consider it way freight.
Q. But you would not consider it state business when this was an interstate shipment?
A. No.
Q. That would make a very material difference in your opinion in describing local and state as being about the same thing, would it not?
A. Not with us, because we do so small a proportion of that kind of business on our way freights. We have the same thing, you know, picking up grain and taking it to a milling point.
1891 Q. Do you have a large movement of that?
A. At certain seasons, but not on way freights with us.
Q. You see here is a difference; it is handled on way freights and there is a large volume of traffic; I do not know what percentage, but everybody knows that cotton has a big movement in Arkansas. Now that is handled on local freights, way freights; would that not make a considerable difference, in your judgment, that a local freight and a state freight are equivalent terms?
A. I should think the effect of that would be to reduce the cost per ton, per mile, of their way freight service.
Q. That was not my question——
A. Reduce relatively the expense of handling the state business.
Q. It might and it might not. That is not my question, Mr. Sewall. You have stated that you disregarded the interstate freight that was on the way freights, in considering that the way freight and the state freight are practically synonymous; now, I am putting to you this large movement of cotton in Arkansas, which is an interstate movement, and carried on the way freight——

A. Does that change the character of the train, you say?

Q. —and ask if that would not change the statement that you have made, that you would disregard that in the interstate freight that is on that, in considering that the state freight and the way freight was synonymous?

1892 A. That would depend entirely on the amount of that business done.

Q. If it was a large volume of business, it would materially change your views on that subject, would it not?

A. It would modify them.

Q. I believe you stated you were lumber agent at one time?

A. Yes sir.

Q. Are you familiar with the method of shipping lumber out of Arkansas and the southern country?

A. No, I did not make that territory; we had troubles of our own.

Q. I will state this situation about the lumber, as I understand it is proved in this case: we have what we call a rough material rate on lumber. Lumber first moves from the logging camp to the saw-mill; then it moves from the saw-mill to the planing mill, or some industry, and then after it is a finished product it is shipped out—the larger part of it is interstate, although some of it is consumed in the state. This movement, up to when it reaches its finished state, is carried on the local; after that, usually on the through trains. Somewhat different, but in principle, the same as cotton.

There is a large movement of way freights of lumber, which ultimately becomes interstate shipment and has an interstate rate, based on that principle.

Lumber is one of the largest movements in Arkansas.

1893 In view of these facts, if I have stated them correctly, would that not also modify your opinion that you would regard the state traffic and the local traffic as practically the same?

A. It would modify it, but I cannot say to what extent, unless I knew the proportion of tonnage that was actually consigned to destination without the state. As I understand you, both cotton and lumber are consigned to some destination without the state.

Q. All of the cotton and the larger part of the lumber.

A. Then your method of handling lumber is a good deal different from ours. We dress lumber in transit, but not just that way. It is a state proposition with us, for the most part.

Q. I want to read you from Exhibit 19, which was a test made on the St. Louis Southwestern Railway, one of the parties to this suit, and it shows that the commercial ton miles on the local train in the state of Arkansas, was 1,084,580; and on the interstate (still of the local train, you understand), commercial ton miles, 2,256,361; do you catch those figures?

A. Yes sir.

Q. That is just in round numbers, a little over twice as much interstate as state carried on the local trains. You could not in view of that, regard those terms of state traffic and local traffic as synonymous, or anywhere near the same thing, could you?

1894 A. Not on the basis of those figures.

Q. These are the test figures here. Your testimony has been based on a radically different method of operation from what these figures and the statements I have made to you appear, has it not?

A. A different conditions; I don't know how radical.

Q. Those statistics show pretty radically——

A. I do not know what periods are covered by those statistics; it might be for a week or year—your cotton does not move all year round, does it?

Q. No, it moves about six months, pretty well.

A. I would have to have the figures for a much longer period than that, in order to say to what extent to modify the situation. I am not testifying as to what happens in Arkansas.

Q. These gentlemen have testified that that was a normal period, representative of the whole traffic of the year; that is what they have testified. I do not know. So far as this case is concerned, we have to take that under the testimony, so far as being representative of the year's traffic.

A. I did not understand that that was supposed to be representative of the year's traffic.

Q. Assuming what I have just stated to you, under the condition of the record, what do you say of the testimony you have given heretofore on the theory that the state business is practically the same as the local business?

1895 A. Well, it does not alter my testimony so far as the matters to which I have testified, on which I am familiar, are concerned.

Q. I understand that perfectly, but I am asking you——

A. If the conditions in Arkansas are such as you have described, and as the evidence states (which, of course, I do not question), and there is no other situation which would offset that to any considerable extent, the testimony I have given would not apply to the conditions in Arkansas.

Q. What would you say, in view of what I have stated to you to be what I understand is the testimony here, and in view of these statistics of the Railroad Company, of this four times as much to operate state as interstate freight?

A. I could not tell that at all without having their traffic figures and knowing what their traffic was as a whole.

(Following colloquy:)

The WITNESS: Handling interstate freight on a local train reduces the cost per ton mile of the handling of all the freight on that train.

Mr. KIRBY:

Q. The local freight train would have to operate any way, to accommodate interstate traffic, if there were no local traffic, would it not?

A. No, it would be operated as a through train in that case. If we had no local traffic between——

Mr. KIRBY:

Q. I did not say local traffic.

1896 A. Excuse me.

Mr. KIRBY:

Q. If you had no intrastate traffic, you have to carry your car to the station anyway, if it is less than a carload——

A. But if we had no intrastate traffic we would not operate way freights in the state where we did not have that kind of traffic; we would operate through freight; we would run a train from Minneapolis to La Crosse.

Mr. KIRBY:

Q. Suppose you had to put a car of each one, or a half car?

A. Then there would be local traffic.

Q. That is what I was trying to get at, the difference between intrastate and interstate: if you had no intrastate traffic you would still have to operate your local train to get your interstate traffic to the local point?

A. If there was interstate traffic at the local points, yes.

Mr. HILL:

Q. This 8½ times on terminal expense, was 8½ on less than carload freight, was it not?

A. Yes sir.

Q. Not state over interstate?

A. No, except——

Q. But——

Mr. MOORE: Let him answer the question.

A. It has a direct bearing on the question because of the preponderance of less than carload freight on our way freight trains, as against our through freight trains.

1897 Q. Is there not some such thing as interstate less than carload?

A. Yes sir.

Q. That would apply the same——

A. The interstate less than carload is handled on a through train to the division point.

Q. And then peddled out on the local?

A. Yes sir.

Q. That 8½ times would apply to that as much as to state, would it not?

A. It would.

Q. That is the character of the traffic and not state lines: the state lines does not have any magic when it strikes a freight train, does it?

A. Not at all.

Q. It is the same old freight train whether it is in Minneapolis or Canada?

A. Yes. We have division points located on state lines in some places, but not in all places.

Q. Do you not carry interstate passengers on local trains?

A. A few.

Q. Only a few?

A. You and I may not mean the same thing by a local train. By local passenger train I would mean the same as by a local freight train, that runs from one division point to another, doing business at the intermediate stations.

1898 Of course all of our through trains stop at certain intermediate points, the principal ones.

Q. What is the average distance between stops on your local trains; do you know?

A. About six miles.

Q. And what on your through trains?

A. On trains between here and Minneapolis, say about twenty miles.

Q. What do you do with these trains stopping every six miles? Don't you pick up any interstate passengers?

A. Occasionally, yes.

Mr. MOORE:

Q. What would it be on your line as a whole?

A. I could not tell you that because we have such a great variety of what we call main lines.

Mr. HILL:

Q. Do you not have any state passengers on your through trains?

A. Yes sir.

Q. A pretty large percentage, don't you?

A. I think I have a memoranda of that, if you would like to know.

Q. I would.

A. An analysis was made of our passenger business on the La Crosse division, in connection with the Wisconsin two cent rate case, and I made a little memorandum of the compilation. It covered five trains.

One was what we call the "Pioneer Limited" from Chicago
1899 to Minneapolis. It is the best through train the St. Paul road operates.

The next is No. 1.

The Pioneer Limited leaves Chicago at 6:30 at night and arrives at Minneapolis at 8:30 the next morning.

No. 5 is the day train, leaving at 9:00 A. M. and arriving at 10:30 at night.

No. 23 is a local train, from Milwaukee to Portage, Wisconsin.

No. 33 is a local train, from Milwaukee to Madison, Wisconsin.

No. 7 is a local train, from Milwaukee to Watertown, Wisconsin.

These figures are made from special reports compiled by the conductors running between Milwaukee and La Crosse, in the state of Wisconsin.

Q. Were they not put in evidence in the Missouri Rate case?
A. I think they were.
Q. By Mr. Ellis?
A. Yes sir.
Q. Would you mind attaching them to your evidence as an Exhibit?
A. I have only a memorandum here; they are not at all complete, because there are only certain features that I jotted down here. There is a great deal of evidence in th Missouri case
1900 that I haven't in this, put this just happens to cover the point you raise.
Q. If you do not object, I would like to have that.
Mr. MOORE: Let him go on.
A. The percentage of through to local passenger miles (this is miles, not individuals), on the Pioneer Limited—that is the night train—was 78.6% through; on the day train it was 47.8%; on the Portage local train it was 9.7%——

Mr. HILL:

Q. I do not quite understand your percentages: you say "through"; do you mean interstate?
A. Interstate, yes sir.
On the Madison local it was 4/10 of 1%; and on the Watertown local there was no interstate traffic at all.
Q. That is just one division of your road?
A. Yes sir.
Q. Have you any statistics that would give you, generally, the number of intrastate passengers that ride on your through trains?
A. No; that division was selected as covering all the different kinds of trains—strictly local; day through trains and night through trains. I do not know of a better example.
Q. If you could do it conveniently, I would be very glad to have you attach that to your evidence.
A. All right, sir.

The MASTER:

Q. Are there any other matters in it?
A. Yes, there are some other things here.
1901 Mr. MOORE: Mr. Sewall, if you wish to do it, you can just take off those figures and make a separate statement of it; have it typewritten and send it to us.
The MASTER: That will be the better way.

A. There are some things here that I have not testified to.

The MASTER: Just so much of it as you have read.

Redirect examination.

By Mr. MOORE:

Q. Mr. Sewall, you handle a good deal of lumber on your line, do you not?

A. Yes, a great deal.

Q. State how you handle it, with reference to milling in transit, for instance.

A. The majority of that is handled on the basis of a local rate to the mill point, which represents the difference between the through rates from the original point of shipment to destination, and the through rate from the milling point to destination, taking the distances arbitrarily; for instance, if we bill lumber from a point where the rate to Chicago is 12 cents, to be dressed at a point where the rate to Chicago is 10 cents, we would add 2 cents, plus whatever arbitrary we saw fit to charge for the stopping in transit, and then it would be re-billed from the milling point whenever they——

1902 Q. How is it handled physically?

A. It would be handled by local trains to the milling point, unless the point of shipment and the milling point were a long distance apart. If one is on one division and the other on another, it might be handled by through freight, but as a rule it is handled by way freight.

Q. You say there is a considerable movement of lumber on your line——

A. Not so much now, because lumber, which used to be a tremendous traffic locally on our lines, has been pretty well used up. We still have lumber in Wisconsin and northern Michigan, but it is not the percentage we used to have. We have——

Q. How long since it ceased to be an important element in your traffic?

A. Well, the lumber traffic as a whole is still an important element.

Q. I mean that part which you raise in this territory?

A. It has been gradually waning for the last five years.

Q. How do you ship—a great deal of territory traversed by your lines, over your lines?

A. Yes, a great deal of it.

Q. How is that grain handled for the purpose of concentration for shipment?

A. The great bulk of our transit grain goes to Minneapolis from the first hands. We have from two to nine elevators at each

1903 station. A train will start from the terminal light—it may be only an engine and caboose—and will pick up grain until they have a full train load; then they will go to the next terminal, and it is taken from there as a through train.

Q. Is that work done by your way trains?

A. No, it is not done by our way trains.

Q. The manner of handling cotton was referred to, as developed by the testimony and as referred to by Judge Hill: if that cotton were not carried on the way trains or local trains, would you consider that was an element that enters into your local traffic, or influenced the estimate which you made as to the relative expense of the business?

A. If it was not carried on local trains?
Q. Yes.
A. No, I should not; it would not affect it.
Q. Would the same be true about lumber?
A. It would.
Q. What is the difference between terminal expense and handling expense? You referred to those two kinds of expense a while ago.
A. Well, as I use the term, the terminal expense is the cost of handling and switching at a division terminal; and the handling expense, as I referred to it, was the cost of loading and unloading less than carload freight at intermediate stations.
1904 Q. In estimating the cost of conducting a traffic, either on local or through trains, do you take into consideration both the terminal expense and the handling expense?
A. Yes sir.
Q. And both kinds of expense are included in the estimates which you have given here, are they?
A. Yes sir.

Mr. HILL:

Q. Are you referring to that 8½ times proposition or general proposition, in that answer?
A. I testified that in my judgment it cost at least four times as much to handle intrastate freight as to handle interstate freight; that is the point I had in mind.

Mr. HILL:

Q. Not on the 8½ times proposition?

Mr. MOORE:

Q. I believe you stated through trains carry local and intrastate freights, did you not? but not to the same extent——
A. Some do and some do not; it is a small percentage of their total tonnage; very small.
Q. I understand that, but it is true that your interstate trains, through trains, do carry to some extent, local freight?
A. Yes sir.
Q. How is it in regard to local trains? Do they also carry interstate freight?
A. Yes, as it originates back of the terminal from which they start, or as they pick it up, destined beyond the terminal to
1905 which they are——
Q. I just mean to call attention to the general facts?
A. Yes sir.
Q. You do not mean to state that either kind of train is exclusively engaged in carrying one or the other kind of traffic?
A. No.
Q. As a general rule, by whom are the carload freights loaded, by the shipper or by the carrier?
A. By the shipper.

1906 The paper referred to by the witness is in the words and figures following to-wit:

"Analysis made in connection with the Wisconsin 2¢ rate case, viz: on basis of actual cost of wages, terminal switching, car cleaning and minor repairs, car and engine supplies, coal and water, (which were 35.9% of the total operating expenses of the Division), the cost of the above items in operating passenger trains specified, on the La Crosse Division, from April 9th to May 30th, 1909, was as follows:

Train.	Per passenger mile.	Per cent of through to total passenger miles.
No. 1	1.84 mills	78.6%
No. 5	2.89 mills	47.8%
No. 23	3.78 mills	9.7% Portage Local
No. 33	4.62 mills	0.4% Madison Local
No. 7	3.09 mills	0.0% Watertown "

Average of all local.....3.21 mills.
Average of all through.....2.18 mills.
Excess cost of local..... 47%.

FRANK E. WARD, a witness of lawful age being duly pro-
1907 duced, sworn and examined on the part of the complainants, testified as follows:

Direct-examination.

By Mr. MOORE:

Q. Please state your name in full?
A. Frank E. Ward.
Q. You reside in Chicago?
A. I do.
Q. Are you engaged in railroad service?
A. Yes, sir.
Q. What lines of road are you connected with?
A. I am with the Chicago, Burlington & Quincy.
Q. How long have you been engaged in railroad service?
A. About 28 years?
Q. Where did you first begin your service in connection with railroads?
A. With the Grand Trunk Railway in Montreal, Canada, in 1881.
Q. In what capacity were you engaged there?
A. I was an apprentice clerk.
Q. How long were you with that company?
A. I was with that company four years in the capacity of apprentice clerk and stenographer.
Q. Where did you go when you left that service?
1908 A. I went from there to St. Paul. I entered the service of the St. Paul, Minneapolis & Manitoba Railway Company, which was the predecessor of the Great Northern Railway.
Q. And how long were you connected with that railroad?
A. Twenty-two years.

Q. State the several capacities in which you acted in connection with that line of road?

A. I was for about two years secretary to the second Vice President of that company. Then I was connected with a subsidiary company, the Eastern Railway of Minnesota, as Secretary and Treasurer; and for a short time successively as purchasing agent, auditor, and then when the road was built and put into operation, as Chief Clerk to the General Manager of that line. That lasted until 1890. Then I was transferred to the Great Northern proper, as Secretary to the President of that company.

Q. Who was the president?

A. James J. Hill. I acted in that capacity for about four years, and then was made assistant to the President of the same company. In 1898 I became General Superintendent of the Montana Central Railway, Great Falls, Montana, and was there for about a year.

Q. Was that part of the Great Northern Railway?

A. Yes, sir, that was a subsidiary company of the Great Northern. I was there for about a year and from the last end of 1898 to 1903 I was General Superintendent of the Great Northern System,
1909 the whole system.

From 1903 until the fall of 1907 I was General Manager of the same company. From the fall of 1907 until the present time, General Manager of the Burlington lines, east of the Missouri River.

Q. What is your age, Mr. Ward, if you have no objection to stating it?

A. 43.

Q. Have you had any experience in the operation of railroads south of the Missouri River and west of the Mississippi River?

A. Only on the Burlington in the state of Missouri.

Q. That is in the state of Missouri?

A. Yes, sir. That is the part of it south of the Missouri River.

Q. You have had no experience in operating a railroad in the State of Arkansas?

A. No, sir.

Q. Are you acquainted with the manner in which local, way freight is handled, generally, on railroads in this country?

A. I believe so.

Q. I wish you would state please, how such freights are handled?

A. It is usually handled—in fact, almost exclusively so, on what we call the local train which on almost all districts is sched-
1910 uled on a time card over the line in each direction; that is, there is one train in each direction.

Q. You mean one train a day in each direction?

A. Yes, sir, one a day in each direction. And the way freight is practically all carried on such trains.

Q. I was going to ask you what character of freight—or, to ask it more directly, what class of trains is local freight, state freight, as distinguished from interstate freight mostly carried?

A. State freight usually being short haul freight, is usually carried on the way freights I have described.

Q. Now on what class of trains are interstate freights usually carried?

A. Interstate freight being usually long haul freight is ordinarily handled on through freight trains that run through from one terminal to another.

Q. To repeat the same question, possibly as the question I have already asked you, I would like you to state the functions or uses to which those two classes of freight are principally adapted and put in the transportation of freights.

A. The way freight or local train, as I have described it, is one which carries the short haul freight going to towns intermediate between the terminals, either carload or less than carload; and those trains "peddle" as we call it: that is, load and unload the small lots of less than carload freight and they "spot" the cars for the
1911 local stations; do all the station switching and are practically traveling switching trains to do the miscellaneous work that has to be done between terminals. The through freights are trains which are made up as nearly as possible of a unit of size, based upon the grades on the line over which they run, and the power that is in use there; and on those trains freight destined to distant points is carried.

So that in handling that freight it is not disturbed. There is no switching or other expense put on to it. It is carried through from one terminal to another terminal ordinarily.

Q. How does the loading of cars in those two classes of trains compare, usually?

A. There is a very much heavier average loading on the through freight, because a very large percentage of the through freight is carload business. Or, if it is less than carload business it is made up of carloads of less than carload business, all united, going from one terminal to another; or, at least beyond another terminal for distribution at local points beyond that.

In the case of the through freight, the opportunity to load the car full exists in the great bulk of the cases.

With the less than carload freight, handled on the way freights, it is of necessity very much smaller in quantity in the cars. The very best that can be done with it is to load the car full at the commencement of its trip, and that load rapidly
1912 reduces as the freight is peddled along the line. And even the original load is small because of the necessity for so stowing it in the cars that it can be reached at the different stations and handled properly. And so to a large extent, because of the character of freight handled in that way, being less than carload lots of miscellaneous merchandise.

Q. Does the fact that the local trains run on daily schedules have any effect upon the loading of them?

A. Oh, yes, very materially so. The service is a fixed quantity in that case, and the service must be given so as to give the people in the country towns their merchandise; and many of those trains carry passengers, too. And they must be regular and the train

must run very closely to their schedule and the business cannot wait for the train load, as is the case with through business.

Therefore, all way freights, locals, are light in tonnage. They are of necessity run on quite fast time from station to station.

Q. It results from that that they frequently start out with light loads,—the fact that they run on fixed schedule?

A. Yes, sir. They are never loaded up to what we call their "engine rating."

Q. Do the local trains carry any interstate freight and do the through trains carry state or local freight?

A. Yes, sir, I think ordinarily there is some interstate freight in local trains; and some state freight in a good many
1913 through trains. But I should say, as a rule, there is very little state freight in through trains.

Q. Is there any difference in the cost of transporting state freight and interstate freight?

A. Yes, sir, the cost of handling state freight, by reason of the short haul and the additional service required, is more expensive than the handling of interstate freight.

Q. I wish you would state the elements that enter into the service connected with the two classes of traffic; that is, state and interstate, that produces that result.

A. In the first place, because of the fact that the state freight is of necessity handled on the way freights; it is handled in a train which is in itself less economical to handle than in the case of the through freight. The tonnage of the train is necessarily less.

The number of cars required to handle a given tonnage of freight is very much more, because of the light average loading.

And the wear and tear on both equipment and roadbed is very considerably greater, because of the additional number of stops and the switching incident to the handling of freight at stations. The wear and tear on freight equipment is very much greater in cases where the cars have to be handled very frequently. In the case of way freight, cars are handled and coupled onto them and uncoupled many times, even when the freight within them is not handled, on
1914 account of picking up and setting out of other cars.

The damage to cars, causing expense and going a long way toward the expense of maintenance of these cars, is caused by that coupling and uncoupling and handling of the brakes.

The element of loss or damage to freight is much more considerable in the case of the state freight than the interstate for the reason that the cars are very frequently moved and it is difficult to so stow the freight that it is not damaged when the impact of coupling comes. That is a matter which has to be watched very carefully and as closely as it may be watched that watching cannot eliminate damage to the freight.

Then the opportunity for pilfering freight is very much greater on cars that are constantly opened.

Q. I was going to ask you, is the loss on account of pilfering and the manner of handling trains as you have just described very considerable?

A. It is. As an example of that, the loss and damage claims on the road with which I am connected amounts in the year to over $300,000, in the aggregate. Of course, that includes all classes of freight. But a very large proportion of that is in this less than carload, short haul, state business, because of the conditions under which it is handled.

The risk of injury to employés is also very much greater on trains of that class, because they are constantly engaged
1915 in the switching of the cars, in their trains and in the handling of freight, much of it bulky and inconvenient packages to handle, which they have to bring out from the cars to the station platforms, and injuries more or less severe occur, more than in the case of the through train men.

Q. How important an element is that? A considerable element of cost?

A. Yes, sir, quite an item. I have not the figures in my mind now.

Q. How does the efficiency of the locomotive in the train haul on the two kinds of trains we are speaking of, compare?

A. In the first place the locomotive used on the way freight train is in almost all cases a smaller locomotive; and, therefore, less efficient and less economical. Because a train, whether it is a small one or a large one, costs about the same to handle in the matter of wages of the crew engaged in it. Therefore the larger the engine the larger the train that you can handle as one unit, the cheaper will the resulting cost per ton per mile be.

The way freight, being handled by a small engine, because it has to go into spurs and side-tracks and around sharp curves to industries, is an extravagant engine in that respect.

The through freight, on the other hand, is handled by an engine just as the structure and character of the
1916 main line roadbed will permit.

The ideal condition for economical operation of a railroad is one where you can use the largest practicable engine, and load it every time it goes out with a train load of loaded cars. Now if that could be done every time, the ideal would be realized. And the further away you get from that ideal the greater the expense per unit is.

And the handling of state freight in way freight trains is about as far removed from that ideal as anything we have in railroad operation.

Q. How do the wages paid the employés engaged in operating the two kinds of trains compare?

A. There is usually a premium paid to a man engaged on a way freight train, running from 10 to 20% higher than they pay a man on the through freight trains.

Q. Is there any element of overtime that would have any effect upon the amount earned by the engine and crews on the local trains over the interstate?

A. Yes, sir, the element of overtime is quite an important factor in the making of their monthly wages, because under the basis under

which railroad train men are paid, they are paid for a minimum day of 100 miles, or 10 hours, or less; the terms being interchangeable—100 miles in ten hours—and way freights in many cases run over lines of less than 100 miles, on account of their slow movement; and the men are necessarily paid by the hour as they run;
1917 because for a given number of miles 50 or 60, they will get not less than 10 hours or 100 miles pay.

Q. Do the locals run at night, as a rule?

A. No, sir, they run almost altogether in the day time.

Q. Does that cause any expense, on account of the cars being out of service or matters of that sort?

A. Only in the sense that those cars are not used during the full 24 hours.

Q. That is what I mean.

A. Those cars can be used only in the daytime, for that reason.

Q. How does the train mileage compare on the two classes of service? That is the matter you have just been over?

A. I do not quite understand the question. You mean the train mileage on a given tonnage of freight?

Q. Yes, that is what I mean.

A. A very much larger number of trains miles would be needed to handle a given number of ton miles in a local way freight than on a through freight—very much larger.

Q. But is there any difference in the use of fuel and supplies upon the two kinds of trains?

A. Yes, sir. The fuel measure in its consumption per ton per mile is very much greater in quantity on the way freight than on the through freight, because in the first place the engine is a small and uneconomical one; and the very frequent stops
1918 and starts adds greatly to the consumption of fuel; and there is a good deal of time spent at stations during which no ton miles are being moved; but during which a great deal of coal is being consumed. Coal is the principal item of supplies; oil, waste and other items increase in the same proportion but they are comparatively small items.

Q. Is there any difference in the number of cars required to reach the same tonnage in the two branches of service?

A. Yes, sir, there is quite a considerable difference because of the light loading in the way freight trains.

Q. Assume a case in which the average haul of state freight is say 70 miles and of intrastate freight 224 miles: how many cars would be required to move a given tonnage of state freight over the length of haul 224 miles of interstate freight of equal tonnage?

Take one carload of interstate freight, the average haul of which is 224 miles: now, how many cars of state freight will be required to handle an equal amount of tonnage contained in the interstate car I spoke of, over that distance of 224 miles, when the average haul of the state freight is 70 miles. I wish you would state your opinion about that?

A. Bearing in mind the conditions under which railroad cars are

moved, there would be a greater use of the cars necessary than the mere difference in the mileage would indicate on its face.

1919 In that case, there would be practically eight times as many cars required to handle the same tonnage in state as in interstate business.

I have in mind, in making that statement, that on each one of the short hauls, comprising the total required to equalize the ton miles for the state and the interstate, that there would be a free time allowance for both the loading and unloading of the freight; and in that case almost universally throughout the country that free time is 48 hours.

So, there would be not only a difference in the mileage but a difference in the time, because of the necessity for getting additional cars, and the time the cars were delayed by reason of the free time allowance under ordinary railroad regulations.

Q. You stated a moment ago it would require eight times as many cars for state freight to carry the tonnage that would be required for the interstate freight: does that cover the free time or does the free time you speak of, 48 hours for loading and unloading, have any effect in increasing that disparity?

A. I think that would just about double it, because without the free time, there is the stoppage at each of the short hauls points and the 48 hours added in each case would more than double it. It would need a pencil and paper calculation to know exactly what that means but it would run a good deal more than double.

1920 Q. I simply want to get at in a general way what the facts are.

What difference is there in the terminal service as between state and interstate freight, and what effect does that difference have upon the relative cost of the handling of the two kinds of freight?

A. In state business there is necessarily two terminal handlings; the freight has to be loaded and unloaded twice; and all of the expense in connection with the billing and checking and expensing is double in the case of the state freight.

The interstate freight never has more than one handling and if it happens to be trans-state freight there is no handling in a given state.

And then the difference in the length of haul would make a marked difference, because wiping out state lines altogether, the longer the haul the less the cost per ton per mile would be for station service, because you have a much greater figure into which to divide that cost.

Q. You spoke of the elements of damage to cars and equipment and to employés, on account of the manner of handling local trains in which state freights are mostly carried: now is there any greater liability to damage to the tracks and any greater cost for maintenance of way produced by the manner of handling those trains?

A. Yes, sir, the stopping and starting of trains adds materially to the wear and tear on the rails and roadbeds.

1921 The maintenance of switches in itself is a considerable item and there are many more switches for instance needed to take care of the short haul business than the long haul.

Q. What is the effect and the extent of the wear and tear on the locomotives engaged in hauling way freight trains as compared with through trains?

A. The additional stopping and starting wears the locomotive out quicker; it brings it to the shop faster and increases the expense.

Q. I wish you would state if the conditions operate in a similar manner in the operation of all the trunk lines of the road in the country?

A. So far as I have knowledge of them, they do. They are practically common to all lines.

Q. I suppose freights are handled generally the same on all lines of railroad in the country?

A. In a general way, pretty much the same.

Q. I wish you would state, in view of the facts you have referred to in your testimony, entering into the difference if any in handling state as compared to interstate freight, what in your judgment the increase in cost of handling the state freights would be over interstate freight, on a road where the average haul of the state freight is 70 miles and of the interstate freight it is 224 miles?

A. My opinion is that the state freight under such con-
1922 ditions would cost not less than five times as much as the interstate.

Q. I want to call your attention now to the manner of conducting passenger traffic:

I believe all the trunk line railroads of the country run their passenger and local passenger trains, don't they?

A. Yes, sir.

Q. Is there any difference, in your judgment, in the cost involved in the transportation of local state passengers over through passengers, that is interstate passengers, as a general proposition?

A. Yes, sir, the cost of handling local passengers, state passengers, is higher than the cost of handling through passengers, interstate passengers.

Q. Why is that?

A. One of the principal reasons for an added cost in that case is the additional amount of equipment required to handle the local passengers.

These local passenger trains run almost exclusively in the daytime and through passenger trains run continuously night and day. They make a very much larger average mileage per day, throughout the year, than do the cars and engines engaged in the local business.

The necessity for tying those cars up at night requires additional cars.

They are cleaned more frequently. The wear and tear on them is
very much more severe than is the case with through cars,
1923 which run many miles without stopping and without changing their passengers.

The expense of providing accommodations for the local passengers is greater. And the employés required for the handling of the tickets and baggage are more numerous than would be the case in connection with the long haul interstate business.

The requirements of the country with which I am most familiar, being a cold country, and I know it is the case down as far as Missouri, is that we have to provide in winter time places where we can heat those cars with steam during the night, while they are standing idle.

We have to provide water for the cleaning of the cars and in many cases special round house accommodations for the engines, which are not required for the through service.

Q. Is there a difference in the length of haul between state and interstate passengers?

A. Yes, necessarily.

Q. Does that enter as an element into the difference in expense?

A. Just as I have stated it, because the short haul passengers are handled and the tickets are sold to them and their baggage handled, much more than in the case with the through passengers.

Q. That is what I supposed you meant.

Now, take a case where the average distance of a state
1924 passenger's trip is 30 miles and of the interstate passenger is 118 miles: what would you say would be the difference in expense of hauling the two classes of passengers?

A. I think it would cost per passenger per mile probably from 40 to 50% more for the state passenger than the interstate, in such a case.

There is one element of added cost which I did not mention; and that is an indirect cost, through the interruption to the through business by those local trains and the necessity for the freight trains being stopped and side tracked and these local passenger trains being first class trains have the right over other trains; and on account of the frequent stops and the slower time they make they cause a greater interruption to other traffic and a greater expense in connection with that other traffic than do the through trains.

Cross examination.

By Mr. HILL:

Q. Do not the through trains lay out the local as much as the local lay out the through trains?

A. No, sir,—well, yes, I think that is true. You are right on that. But there are a great many more through trains than there are locals so the interruption of the through trains by the locals is greater in the aggregate, I think.

Q. Is it right to charge all that on to the locals?

A. Not all of it, but a great deal of it. It is an indirect expense contributing to the higher cost of handling the local business.

1925 Q. Why should you charge to the local any more than you should to the through?

A. Because the through train runs on quicker time and charging all that actually occurs in either case, the delay on account of the local is greater than it is on account of the through.

Q. You have to make the local get out of the way to let it run faster, don't you?

A. No, sir, not in the case I cited; because I am speaking of the local passenger trains and the delay to the through freight business.

Q. I was thinking of the local freight when I asked the question.

A. I did not speak of that in connection with the local freight. The local freight usually does get out of the way.

Q. It is not right to say that should be an expense of the local freight?

A. No, sir, I didn't say that.

Q. You were referring to the local passenger trains?

A. Yes, sir.

Q. In speaking of these five times more cost for handling state freight, you mean by that freight which is carried on the local, don't you?

A. Well, I took that into account as the principal item going to make up the total of state freight; and meant it in the broad
1926 sense that it does cost in my opinion five times as much to carry state as interstate, taking that element into consideration.

Q. Basing that principally upon the proposition that you think the local train carries largely state freight?

A. Yes, sir.

Q. And the extra cost is the extra cost of operating the local train?

A. Well, yes, the local train and all the freight that is carried on that local train.

Q. There is no difference in the cost of freight, state or interstate, per se?

A. No, sir, it is because of the different character; state being short haul and interstate being long haul.

Q. I want to call your attention to an exhibit in this case put in by one of the complainant railroads being Exhibit 19. This shows the commercial ton miles carried on the local freight for one month 1,084,680; that is state freight. The interstate carried on local trains for that month 2,236,361; something over double the commercial ton miles of interstate freight were carried on the local trains during this month.

And it is in the testimony by the railroad witnesses that that month would fairly represent the business of that company.

— Is that a condition to which you are accustomed in your railroad experience?

1927 A. That proportion is larger for the interstate on the local trains than would ordinarily be the case. I think possibly that might apply in some special cases on some special roads or some special parts of those roads.

Q. But the testimony you have given in explanation of this difference in the cost of the service is not based on such traffic as this, is it?

A. That would not up-set it materially, because even though there were interstate freight carried on the local trains, the cost of the handling of that state freight would not be materially reduced by reason of that fact; or, rather, put it the other way: the cost of handling the state freight would be very much more than what I have stated if it were not for the saving effected by the handling of

that interstate freight on that train. If we excluded all the interstate freight from the local trains, the figure of five to one would not be at all correct.

Q. But the proportion there of two to one carried on those local trains of interstate freight, should make it bear that portion of the expenses, should it not?

A. Well, I don't know that I can answer that. That would depend upon conditions. I do not know to what you refer and perhaps it is in a territory with which I am not acquainted. I rather feel as though I could not answer that question.

1928 Let us put the other side of that proposition: this was (as I have stated) as an actual test. Suppose an actual test of the performance of a similar month for a representative period should show that 50% of the state freight ton miles were made on through trains: what, then, would be your opinion of the extra cost of the state business?

A. That would take some time to consider. It would perhaps modify my opinion but to what extent I could not say, off hand.

Q. It would modify it materially, wouldn't it, Mr. Ward?

A. I am not prepared to say it would do it materially but it would modify it to some extent. That would depend upon the surrounding circumstances. I would like to understand the whole case before I would make a definite answer on that.

Q. Are you familiar with the local conditions in Arkansas, at all?

A. No, sir.

Q. Are you familiar with the cotton movement.

A. No, sir.

Q. Your roads are grain carrying roads, of course. You originate grain: are you familiar with the way grain is distributed in the non-grain producing states?

A. Distributed, you mean——

Q. In Arkansas?

A. I am not.

Q. Of course you are familiar with the way it is gathered up and shipped down to Arkansas?

1929 A. Yes.

Q. And you know how it is handled at the other end of the line?

A. Yes.

Q. I will state what I understand to be the evidence on that: we having a milling in transit rate in force there and grain is shipped into the trade centers on that rate; and what is not consumed in that particular trade center is shipped out on the way freights and most usually take the through rate from the point of origin to the point of destination—the balance of the through rate. In that way a large volume of the grain tonnage of the state is handled. And that is one of the large movements in the state. I cannot give you the percentage, so I will have to just speak of it generally.

Assuming that to be a correct statement of the handling of that grain, how many terminal expenses would you ascribe to that movement in the state of Arkansas?

A. I don't believe I could answer that intelligently. That is, I

would not feel sati-fied with my own answer, because I am so unfamiliar with the conditions of the handling of that business at the point where it is milled. I think someone familiar with local conditions could answer that much more intelligently than I could.

Q. It is apparent from that statement, if it goes into a trade center that way and is held there for a while, and then con-
1930 signed to another place on the local freight, there would be three terminal expenses within the state, in that case?

A. Yes, sir, there would be in that case, if the trade center was in the state. Grain unloaded and put back again into another car and shipped out again.

Q. Or if it were just put on the track. Suppose it went from some point on your road to Little Rock, on a through train and then would be side-tracked down there at Little Rock and a day or two later they would get an order to ship that car to Arkadelphia, further south; they would hitch it on the way freight and haul it down there?

A. That is a terminal expense of a certain kind, but it is not the particular kind of which I thought in speaking of the state freight in my direct examination. All through freight is what you might call an intermediate terminal expense, which is small in quantity, because when it gets to an engine terminal the engine is changed and the make-up of the train is more or less altered; but that item is very small as compared to the whole.

Q. But this is reconsigned and usually rebilled to the next point. Would not that include all the terminal expenses?

Mr. MOORE: Would you call that interstate if it is reconsigned and rebilled, any more than you would a ton of merchandise hauled into a merchant's store and then reshipped out?

Mr. HILL: We are not arguing legal questions now.

1931 Q. Mr. Ward, would not that include all the terminal expenses you have heretofore named?

A. No, sir.

Q. What else would there be?

A. There would not be the switching of that car to the track on which it is to be unloaded and taking it away from the track and putting it on another track. It would be quite different in the amount of work done and the amount of property used in connection with the movement.

Q. I do not quite catch that difference. In any event, in handling it on the terminal it would be switched to the particular industry in which it is to be reloaded?

A. No, sir. I am acquainted with reconsignments of freight of various classes, and that is not the way it is handled. It does not go to the industries. It comes into a station on some kind of a holding order and is just put on some convenient holding track in the train yard; and is picked up again when the rebilling is received. But between that and a car coming into a terminal to be unloaded, the difference is quite marked. Because in one case a car might be switched a long distance, at considerable expense and a good deal of

property used in so doing it. And the same thing in getting in the empty and taking it out loaded again.

Q. I see the difference. If that went into the elevator in Little Rock, would there be any difference?

A. It would not be any different from any other car. I
1932 am speaking of Little Rock, not knowing the situation there.

Q. In the event it went into the elevator, then there would be three terminal expenses in Little Rock?

A. One at the loading point and two at Little Rock.

Q. Oh, yes, I meant the unloading point; two at Little Rock?

A. Yes, that car is loaded outside of the state.

Q. I am supposing it to be loaded on your line?

A. Yes, sir.

Q. There would be three, then?

A. Yes, of the kind named.

Q. I will state to you as I understand the evidence as proved in this case the way cotton is handled:

Cotton is generally picked up at a plantation or more generally at a small town, and shipped on the way or local freight to the nearest compressing point. It is there delivered to the compress company and is compressed. After compression it is delivered to the railroad company and shipped east.

With the exception of less than one percent, all of the cotton of Arkansas is shipped out of the state? There is an interstate rate given from the point of origin to the point of ultimate destination, omitting its concentration for the purpose of compression:

What would you say as to the terminal handlings of that commodity, handled in the way I have stated in that question?

1933 A. That business is so strange to me that I do not feel competent to express an opinion. It would be a factor which those who know the state and class of business could more fully detail.

Q. I will state that more fully, which will enable you to answer. It is handled into the compress point less than carload; it is handled out of there most usually in carloads, after it is compressed. You know from general knowledge that cotton is one of the large commodities of Arkansas?

A. Yes, sir.

Q. That large handling of cotton, in the way I have outlined, upon the local freight, and that being entirely an interstate movement, would have a material effect upon your opinion you have heretofore expressed as applied to conditions in Arkansas, wouldn't it?

A. I don't think so.

Q. Why not?

A. In almost any state you can think of there is some peculiar condition which would tend to reduce the exaggerated conditions that might apply to the handling of state or interstate freight.

Arkansas may have cotton; North Dakota has wheat; Minnesota has wheat or iron ore. They all go to make up the general average.

1934 While I don't know Arkansas, on account of the much longer haul I don't believe that fact would very materially alter my opinion.

Q. Suppose that cotton movement represented a larger tonnage than all the intrastate tonnage of the state: what would you say, then?

A. Of course, you understand my opinion as to the five to one, was based on a general proposition, based on certain lengths of haul, state and interstate. I don't believe that would materially affect my opinion of it.

Mr. MOORE: May I ask what you mean, Judge Hill, when you say the cotton movement represents what percent of all the business of Arkansas?

Mr. HILL: I did not say any percent.

Mr. MOORE: You said a large part of the business: do you mean the cotton moves from the country point to the compress, the concentration movement represents a large percent of the business of Arkansas?

Mr. HILL: I did not say that.

Mr. MOORE: Is that what you meant?

Mr. HILL: I am talking about the whole movement of Cotton.

Mr. MOORE: What you are discussing with the witness is the country movement to the compress. You include the country movement to the compress until finally shipped out of the state.

1935 Mr. HILL: It is all interstate. Part is carried on the local and part on the through train.

I meant the entire movement of the cotton.

Q. Mr. Ward, the following question and answer you gave a while ago: Suppose you exclude all the intrastate freight from the local trains, would not that put a greatly enhanced cost upon the interstate freight which is carried on these local trains?

A. If you exclude all the intrastate freight from the local trains?

Q. Yes. I am going back to this statistical table or showing on the Cotton Belt road, on the local train there was carried twice as much interstate as intrastate.

I say, if you exclude all that intrastate freight from local trains, would not the cost be greatly enhanced?

A. As an operating man I don't think I would carry it on the local trains.

Q. I am not asking what you would do but as to the result if you did carry it there?

A. It strikes me as being a rather impossible proposition.

Q. I think you put just the other proposition; and if that were possible I do not see why this should not be the same.

A. I do not recall anything that should bear that interpretation.

Mr. KIRBY: Your statement was that the carriage of inter-
1936 state freight on local trains reduced the cost of the intrastate, because it increased the tonnage: if you excluded the interstate freight from the local trains the cost of the state freight would be greatly enhanced?

A. Yes.

Q. Now, we ask you where the interstate freight is twice the amount of the tonnage of the local train, if you exclude the intrastate freight from that local train would not it greatly enhance the cost of the carriage of the interstate freight?—just the other proposition?

A. It is a little more than the other proposition.

Q. You have to carry your interstate freight on the local trains between those local stations?

A. It would make it larger if that were a possible condition, yes.

Mr. HILL:

Q. You spoke about the less than carload freight on the local trains: isn't there a great deal of less than carload freight on through trains?

A. There is, but it is in carloads. You understand, there may be a carload of less than carload freight and when it is handled on a through train it is in most cases at least carried at least one full operating district as a carload; and then it may be peddled from one terminal to the next terminal.

Q. It would require peddling?

A. Yes, sir, it will require peddling over a part of the road.

1937 Q. Sooner or later?

A. Yes, sir, sooner or later.

Q. It does not cost less to peddle that less than carload interstate than less than carload state?

A. No, sir, but if you are talking about cost per ton per mile, over the whole distance, it makes a difference.

Q. What proportion do you think the local trains carry of interstate less than carload freight?

A. I don't know. That varies very much in different parts of the country.

Q. In making your estimate here a few moments ago; about what proportion were you bearing in mind when you made your general statement?

A. I had in mind that more than half of it would be state business.

Q. More than half?

A. Yes, sir.

Q. Carried on the local trains more than half would be state freight?

A. Yes, sir.

Q. In the Iron Mountain exhibit in this case, No. 26, it shows that in October, 1907 (a month which they took as representing their traffic) interstate less than carload 2,253,381 the number of tons one mile.

Intrastate freight 459,204 tons. That is for a corresponding period.

1938 Would that be such a situation as you would regard as a normal movement of less than carload traffic?

A. No, sir, that would hardly be normal. That was the tonnage handled on the local trains, wasn't it?

Q. All trains.

A. The first question was as to the tonnage handled on local trains?

Q. Yes.

A. Then that would be different.

Q. I have no separation of it on this exhibit. This is all trains.

A. I think perhaps I might modify my answer, because I was talking and thinking only of business carried on local trains.

Q. What would you say? Would you say this would be a normal movement?

A. On all trains it would not be abnormal, I should not think. Of course that varies so much it is hard to say yes or no to that.

Q. As a matter of fact, there is no hard and fast rule on the subject, at all?

A. It is not a rule but a matter of fact.

Q. And it is a question of fact which requires local knowledge to work out, isn't it?

A. Usually, yes.

Q. And you have absolutely no knowledge of the conditions in Arkansas?

1939 A. No, sir, none at all.

Q. They are academic so far as you are concerned?

A. Academic is putting it pretty strong.

Q. I am not questioning your ability to speak of propositions generally, at all; but I am asking as to the local situation down there in Arkansas?

A. I don't know it.

Q. Have you ever had the pleasure of visiting our great state?

A. I traveled through it once.

Redirect examination.

By Mr. MOORE:

Q. Mr. Ward, your attention was called to the reconsignment of grain at commercial centers in Arkansas, and the terminal expenses, and the fact that there were three terminal handlings and expenses: If we should assume that the expense of loading and unloading was borne by the shipper and not by the carrier, what effect would that have upon the expense attached to it.

A. Considering it was grain, it would not have any effect, because the loading and unloading of grain is always done by the shipper.

Q. What I mean is, what effect would it have in differentiating it from a case where the expense is borne by the carrier: as I understand it, the terminal expense of handling local way freight

1940 on local trains is borne by the railroad company, less than carload freight?

A. All less than carload business is handled by the railroad employés.

Q. If the terminal expense was borne by the shipper and not by the carrier it would make a difference so far as expense is concerned?

A. Yes, sir, of course, the cost per ton, either by the ton load or ton mile is much greater in the case of less than carload than in the carload handling.

Q. If 37% of all train mileage is performed by the local trains, would it be abnormal or unusual for those trains constituting that per cent of the total trains to carry 8% of the interstate business?

A. No, sir, I think not. I think that would be a very normal condition.

1941 F. O. BECKER, a witness of lawful age being duly produced, sworn and examined on the part of the complainants, testified as follows:

Direct examination.

By Mr. MOORE:

Q. State your full name, please.

A. F. O. Becker.

Q. Where do you live?

A. Chicago, Ill.

Q. What is your occupation?

A. I am Chairman of the Western Classification Committee and Superintendent of the Western Railway Association's weighing and inspection bureau.

Q. How long have you occupied those positions you speak of?

A. Since the summer of 1904.

Q. The Western Classification Committee classifies the commodities and objects of transportation on the railroads of the country, does it not?

A. In western territory.

Q. I was going to come to that in a moment. Over what
1942 territory does its jurisdiction extend?

A. Generally speaking, the territory west of the Mississippi River.

Q. What is the object of making the classification that is made by that committee? I mean with reference to rate making by railroads?

A. The purpose is to classify the freight that is offered for transportation.

Q. Is that done as a basis of rate making by railroads?

A. Yes, sir.

Q. How does that committee proceed in making its classification. I mean with reference to the character of the articles embraced in the classification.

A. Primarily they take first into consideration the density of an article; because the lighter and more fragile, the more it costs to handle and transport it.

Secondly, the value; the greater the value the greater the element of risk, which also enters into the cost of handling and transporting.

Secondarily, the character of risk; susceptibility to damage; the volume——

Q. In what sense do you use the word "volume," Mr. Becker?
A. The quantity, taken as a whole; the total tonnage.
Q. Does the space occupied have anything to do with it?
A. Always. That is covered by "density."
1943 The weight per cubic foot or the number of cubic feet per hundred pounds, plus the value per hundred pounds, makes what we call "a unit." And taking the several hundred commodities, for instance, rated in the classification as "first class" we have found the first class unit to be approximately 20.61. The other classes range downward from that.
Q. That figure you gave, 20.61, is a kind of base, is it?
A. Yes, sir, just a basis which we first consider. There may be other conditions subsequently entering into the consideration but primarily we consider the density and the value.
Q. Does the cost of transportation—and I use that word now in the broad sense—including transportation service and handling and the risk incident to the transportation, enter into the consideration of the committee in the classifications made by it?
A. Always.
Q. Is it a part of *of* the duties of that committee to hear complaints and adjudicate and pass upon them, among the shippers or railroads, either?
A. Yes, sir, they meet twice a year for that purpose.
Q. I wish you would state in just a brief way, in what manner the committee proceed in passing upon and determining complaints as to commodities, for instance, that are in the classification
1944 where the object of the complaint is to bring about a change in classification: what are the considerations and what are the elements that are considered by the committee in such cases?
A. A shipper who feels that any commodity handled by him is classified unreasonably high, executes a petition on a blank, files it with the committee, and it is docketed for the consideration of the committee at their next coming meeting.
We always require of him that he furnish the weight per cubic foot and the value per hundred pounds. He presents his reasons to the committee, either verbally or in writing.
The committee takes his statements under consideration and bases its conclusions on what it believes to be reasonable and fair in rating; taking into consideration the weight, value, risk, and tonnage and other elements or features that I have mentioned.
Q. Your statement that it takes into consideration elements of risk, value, density, etc., involves again the cost of the service as I defined it a while ago in my question?
A. Yes, sir.
Q. Do your duties as superintendent of the Western Weighing Association and member of the inspection bureau give you any opportunity to observe the effect of your classification with reference to the element of cost of service?
A. Yes, sir, particularly so with respect to the element of
1945 risk. Fragile packages or articles that often become damaged in transit under the ordinary handling.

Q. What is your practice should you, in the discharge of your duties, see something that you considered out of line in the classification?

A. It is always our custom to docket such questions for the consideration of the *committees* at the next meeting.

If, for instance, our inspectors should observe that bottles in bulk were susceptible to great damage and consequent claims, we should docket for the consideration of the committee the question of requiring them to be loaded in packages so as to remove that element of cost.

Q. Why does your committee give consideration to the question of bulk or density in making your classification, Mr. Becker?

A. Because as I stated in the first place, the lighter the articles the more it costs to handle and transport.

Q. State why that is, please?

A. For instance, a given weight of baskets must necessarily take more space than a given weight of iron; and it would require more cars to transport; all of which adds to the cost.

We found it necessary to rate the baskets three times first class; whereas we rate iron fourth class, in less than carload quantities, that being our lowest less than carload rate.

1946 Q. The reason for that is that it requires more cars and more equipment in which to transport the more bulky articles: is that it?

A. Yes, sir.

Cross-examination.

By Mr. HILL:

Q. Mr. Becker, how do you get the cost of service, this element to which you say you always give consideration?

A. We know that it costs to transport; that it costs to handle; that the element of risk necessarily enters into the cost. We, of course, do no know the total cost; but all of these are factors in the total cost.

Q. You have no basis of cost?

A. I hardly understand what you mean by "basis."

Q. Do you use the ton per mile as a basis in ascertaining the cost of a given line of road or through a given country?

A. Oh, no, sir.

Q. Yo do not give any consideration to that?

A. No, sir.

Q. You know that railroad companies prepare statistics of their cost per ton per mile?

A. I believe they do. That is not in my line but that is my understanding.

Q. But your Western Classification Committee does not use those statistics in making its classification?

1947 A. No, sir.

Q. You know that this element of risk exists, and you

bring to bear your experience and your observation on that: isn't that a fact?

A. Yes, sir.

Q. You have no actual figures on that?

A. Yes, sir, we take the aciduous carboys, for instance, and we know, of course, there is great liability to damage and subsequent loss to other freight.

Q. What I mean is, you do not have the cost of carrying those acids in carboys. You do not know what it costs to carry that particular commodity, do you?

A. No, sir, not definitely.

Q. You know it is very liable to injury and easily broken and you put a high rate on it?

A. Yes, sir.

Q. Going back to your illustration of baskets and iron: You use your best judgment to determine the relation that should be borne between those two commodities?

A. Yes, sir. That is, we do not compare baskets with iron, particularly; but there is a relation and a distinct relation so far as relates to density and value.

Q. You used those as an illustration and I think a very apt one. That is the substance of your work in arranging the proper relation between the different commodities, isn't it?

A. Yes, sir.

1948 That is the committee's work. I am Chairman of that committee.

Q. I am speaking of you in your collective capacity.

A. Yes, sir.

Q. You do not make any rates, themselves?

A. No, sir.

Q. You just make the classification upon which the rates may be fixed?

A. Yes, sir.

Q. Those classifications have many exceptions to them, don't they, by the railroad companies in different parts of the country?

A. Yes, sir.

Q. Are they generally accepted by the State Commission?—Is the Western Classification generally accepted by the Commissions in your territory?

A. I think so, although there are quite a number of exceptions.

Q. Each Commission makes its own classification?

A. Each Commission in the western states has its own classification, which are largely based upon the Western Classification Committee's classification.

Q. And they contain many variations?

A. Yes, sir.

Q. Are there other classifications besides the Western?

A. The Official and the Southern, besides the Western Classification.

1949 Q. Are the classifications the same in the official and the southern as in the western?

A. The ratings you have reference to?
Q. Yes.
A. No, sir, not always.

Mr. MOORE: Are the ratings and classifications the same?

A. I understand his question to be that a commodity rated in the Official second class, may or may not be second class in our territory.

Mr. HILL:

Q. That is what I mean.
Why is there that difference in different classifying bodies?
A. For the same reasons I assume that makes the ratings higher in the sparsely settled district than they are in the thickly settled community. The traffic is more dense; the rates are lower and generally speaking, the classification ratings are somewhat lower. Relatively they should be approximately the same.
Q. There is a very great difference in local conditions in the territory covered by the western classification?
A. Yes, sir, that is what makes the exceptions, necessarily.
Q. Take the conditions in Arkansas and the conditions in Nebraska?
A. They are quite different.
1950 Q. In fact there would be a greater difference in the different parts of the western classification committee's territory than in the official and southern and western classifications?
A. Yes, sir, so far as aggregate charge is concerned; but so far as relations between the different commodities, I should say no.
Q. There are many published exceptions in Texas to the Western Classification?
A. Yes, sir.
Q. Why is it that Texas has worked out so many exceptions?
A. They have a Commission who makes its own ratings, and exceptions; what governs them I do not know.
Q. I refer to the interstate tariff, where there are exceptions.
A. Those are in the nature of commodity ratings.
Q. They amount to exceptions, don't they?
A. Yes, sir. And you ask what makes that necessary?
Q. Yes.
A. I presume commercial and competitive conditions.
Q. Those Texas exceptions to the Western Classification apply on the traffic moving from St. Louis to Texas, do they not?
A. Yes, sir.
Q. All the trans-state traffic that moves through Arkansas or St. Louis to Texas would be governed by the exceptions to the
1951 Western Classification, made to fit Texas conditions, wouldn't it?
A. That would be my understanding.
Q. Does your commitee give consideration to commercial and competitive conditions also, in making classifications?
A. More or less; not to the same extent, of course, that governs

in the commodity ratings. You know our classification governs over quite an extensive territory and there might be local conditions that would make it necessary to except to that classification.

Redirect examination.

By Mr. MOORE:

Q. Mr. Becker, are the exceptions in the interstate classification made in Texas, made to conform to the classification made by the state authorities; I believe you said the Texas Commission made a classification which contained exceptions to that made by the Western Classification Committee?

A. They have a classification of their own which in some respects differs from ours.

Q. I understood you to say that the interstate classification in Texas contains a number of exceptions to that made by the Western Classification Committee: Are those exceptions made for the purpose of conforming the interstate classification to the state classification?

A. No, sir, not as I understand it. You say "exceptions
1952 in the classification;" I presume you have reference to the commodity tariffs, which in themselves are exceptions to the classification.

Q. Take it that way: Are there exceptions, whatever they may be, if commodities are embraced in the different tariffs, made for the purpose of conforming so far as may be to the Texas Commission's classification and rating?

A. Not according to my understanding of it.

Q. What is the object in making any change from your classification in Texas?

A. There may be many conditions. The traffic may not be able to stand the classification rating from a competitive standpoint. For instance, from New York by water to Texas, there is a strong competition, which makes it necessary for the lines leading from St. Louis and other gate-ways, to meet.

Q. It is conditions of that sort that bring about the exceptions in Texas?

A. That is one of many. The boat line rates from New York to Galveston plus the local Texas Commission's rate from Galveston to an interior point might make a rate less than our classification rating; and it then becomes necessary for the interstate lines from St. Louis, Kansas City and other gate-ways to meet that rating by an exception to the classification ruling.

Q. What classification governs from St. Louis to Texas?

A. The Western Classification in western territory.

1953 Q. What classification governs interstate rates to Texas?

A. Western Classification.

Mr. HILL: You mean the Western Classification and Texas exceptions?

A. He asked me what classification governed to Texas from interstate points.

Mr. HILL:

Q. And the exceptions are in the western classification?
A. No, sir.

Mr. MOORE:

Q. Are there any exceptions? You say "The western classification governs on interstate movements in Texas": now there are exceptions to that such as you mentioned a while ago.
A. Commodity ratings, yes.
Q. Are those exceptions you speak of also made or contained in the state classification made by the Texas Commission?
A. No, sir, they publish no interstate rates.
Q. I do not mean that. What I mean is this: these exceptions to the classification made by your committee which obtain in Texas——
A. I want to correct you there, please. We do not make any exceptions to the classification. Those are made in the tariff committee, governing in different respective territories.
Q. I understand that. But what I mean is this: are the exceptions which prevail in Texas, however made—I understand they
1954 are made by the local committees down there, but in your classification which applies to interstate transportation are they the same or do they correspond in a general way with the classifications made by the Texas Commission?
A. If I gather your idea correctly——
Q. I will explain my idea to you: I understand that the local authorities of Texas have made a classification which differs in some respects with the classification made by your Committee: that is which prevails in local business?
A. Yes.
Q. I understand also that on account of the conditions which you mentioned a while ago, the rating tariffs in Texas made exceptions to the classification made by your committee applicable to that section?
A. Yes, sir.
Q. I want to know if the exceptions made by the local tariffs in Texas, and the application of the interstate rates correspond to the classification made by the Interstate Commerce Commission and applicable to that state?
A. There is a distinct relation between the rates made by the Texas Commission and the interstate rates governing to Texas points.
Q. That is what I wanted to know.
A. Absolutely and necessarily so.
Q. That is so, generally, too, isn't it?
1955 A. Yes, sir.
Q. You were asked on cross examination if the same classification was made by other bodies, similar to yours, other classification committees and you stated there were instances where they differed: as a rule, taking it as a whole, how does the classification made by the different classification committees—that is in different

territories compare, baring exceptional local conditions which might bring about a change?

A. Generally speaking there is a very close relation between the different commodities, but in the Official Classification territory oftentimes their basis is somewhat lower than ours.

For instance, they may classify an article as third class and we will classify it as second class. But there is approximately the same relation between the first, second, third and fourth classes.

Q. Do you know what brings about that difference you mentioned in the different territories? What I mean is, is it some local condition that obtains there, purely applicable to that territory?

A. I think it is, for the same reason the rates are lower. That is, the population is more dense and the traffic is heavier and they can afford to handle the business on lower rates and on a lower classification basis.

Q. I do not understand you to have stated that your classi-
1956 fication is based on a knowledge of the actual cost of transportation of the several commodities embraced in the classification. I understand you to mean that it is made relatively with reference to the cost of the articles you are dealing with?

A. Yes, sir.

Q. That you are able to determine in the way you spoke of, by comparing the density, bulk, weight, the value and those qualities that pertain to the articles that enter into your classification?

A. Yes, sir.

Recross-examination.

By Mr. HILL:

Q. I do not know that we have clearly in the record the conditions about the Texas traffic from St. Louis through Arkansas to Texas: That is what we are concerned with; that which will move over the Iron Mountain and the Cotton Belt road through Arkansas into Texas. I understand from you there is an exception sheet issued by the railroads for Texas points: isn't that true? Issued by the Southwestern tariff bureau?

A. Yes, sir.

Q. That exception sheet governs the traffic moving from St. Louis through Arkansas into Texas?

A. Such traffic as it covers, yes.

Q. Do you know the range of commodities it covers or the
1957 volume of the traffic it covers?

A. No, sir, I would hardly attempt to say it.

Q. Necessarily you would not know it accurately; but could you approximate the volume of that traffic?

A. No, sir.

Q. It is a large movement, isn't it?

A. Yes, sir, it must be a large movement.

Q. Do I understand that those exception sheets have been issued by these bureaus to bring the interstate movement in relation with the Texas state movement?

A. Not in all instances. My point is that there is a distinct relation between the rates made by the Texas Commission and the interstate rates to Texas points.

Q. That is to say, on account of commercial conditions?

A. Yes, sir. If the Texas Commission reduces the rate on a given commodity between points in Texas, the interstate rates are reduced proportionately.

Q. This large volume of traffic passing through Arkansas, from St. Louis to Texas, will then be governed largely as to both classification and rates by the classification of rates put in by the local authorities of Texas, will it not?

A. I do not know what proportion of that would be governed in that manner. But there is a distinct relation. The rates in Texas might be reduced by reason of the fact that the interstate rates were reduced, and vice versa.

1958 Q. But my point is, that these classifications of rates made by the Texas authorities would have a distinct relation and bearing on the interstate classification of rates made from St. Louis to Texas, on that traffic passing through Arkansas?

A. The local Texas classification has no effect whatever upon the Western Classification. But I assume that any classification adopted by the Texas Commission, which would have the effect of reducing the rates in Texas, would make it necessary to establish an exception to the Western Classification in the shape of a commodity rate.

Q. Or an exception sheet to the local classification?

A. Or an exception to the Western Classification.

Redirect examination.

By Mr. MOORE:

Q. That relation you speak of between the classification and rates, as between state and interstate classifications of rates in Texas, prevails elsewhere generally in your territory—that relation between interstate and classification rates?

A. Yes, sir, I so understand it.

1959 Mr. F. P. JOHNSON recalled, testified as follows:

Direct examination.

By Mr. MOORE:

Q. Mr. Johnson, I hand you a statement: please state what that is.

A. The paper marked F. P. Johnson Exhibit 7-*a* is a statement of the assesment as levied by the Arkansas State Board of Assessors for the years 1907, 1908, and 1909.

That portion for the years 1907 has been revised by eliminating the assessment of the Little Rock Junction Railway, which was in our original statement filed as Exhibit 7.

Q. Will you file this paper as an exhibit to your testimony?

A. Yes, sir.

The paper referred to is marked "F. P. Johnson Exhibit 7-*a*." Said exhibit is in the words and figures following to-wit:
For Exhibit "7-*a*" see Volume 8, page 5273.

1960 Mr. MOORE:

Q. Mr. Johnson, will you file now the statement marked Exhibit 3-*a* and explain what it is.

A. Exhibit 3-*a* shows the assessed value of the property divided between freight and passenger traffic and total, and between intrastate freight and intrastate passenger traffic.

It shows the amount of the assessment, interest on that amount at various percentages, and the return upon the value of the property, based upon the assessment as levied by the Taxing Board.

Mr. HILL:

Q. Is that just the same as your original Exhibit 3 except with the change of eliminating the Little Rock Bridge?

A. Yes, sir, it is the revision of Exhibit 3, paragraphs C, D, and G.

Q. It takes its place?

A. Yes, sir, of those three paragraphs.

Mr. MOORE:

Q. Will you file that as an exhibit to your testimony?

A. Yes, sir.

The paper referred to is marked "F. P. Johnson Exhibit 3-*a*." Said exhibit is in the words and figures following to-wit:
For Exhibit "3-*a*" see Volume 8, page 5256.

1961 Mr. MOORE:

Q. Mr. Johnson, will you file the statement marked Exhibit 8-*a* and explain what it is?

A. Yes, sir. I wish to say in this connection that Exhibit 3-*a* deals with the business of the road for the six months ending Dec. 31, 1907; and Exhibit 8-*a* is the same kind of statement, based upon the assessment for those same three years, 1907, 1908, and 1909, and covering the business for the six months ending June 30, 1907; and in that same respect takes the place of paragraphs C, D, and F.

Mr. HILL:

Q. That is, there is no other change except that?

A. That is correct.

The paper refered to is marked "F. P. Johnson Exhibit 8-*a*." Said exhibit is in the words and figures following to-wit:
For Exhibit "8-*a*" see Volume 8, page 5281.

1962 Mr. MOORE:

Q. What is the next one, Mr. Johnson?

A. Exhibit 8-*b* is based upon the assessed value of the property and covers the period for the calendar year ending Dec. 31, 1907,

and shows the assessed value divided between the total freight and passenger traffic and the intrastate freight and passenger traffic; and shows the return upon the value of the property based upon that assessment. It supersedes paragraphs E and H in Exhibit 8.

Q. Will you file that as an exhibit to your testimony?

A. Yes, sir.

The paper referred to is marked "F. P. Johnson Exhibit 8-*b*." Said exhibit is in the words and figures following to-wit:

For Exhibit "8-*b*" see Volume 8, page 5284.

1963 Mr. HILL: The defendant objects to any exhibits containing any calculations on the 1908 and 1909 assessments. We have made no objection to the changing of the assessment, but we do not think the 1908 and 1909 assessments have any bearing upon the case.

Mr. MOORE:

Q. Mr. Johnson, I hand you a statement which you will please examine and state what it is and file it as an exhibit to your testimony.

A. This is a statement of the gross earnings of the St. Louis, Iron Mountain & Southern Railway in its entirety for the period from Jan. 1, 1900, to June 30, 1908, divided into periods of six months each. It shows the traffic mileage of the St. Louis, Iron Mountain & Southern Railway, the gross earnings, and the gross earnings per mile.

The paper referred to is marked "F. P. Johnson Exhibit 45." Said exhibit is in the words and figures following to-wit:

For Exhibit 45, see Volume 8, page 5394.

1964 C. J. MCPHERSON, recalled, testified as follows:

Direct examination.

By Mr. MOORE:

Q. Will you please explain this statement I now hand you?

A. This is a statement showing the local and through passenger trains operating in the state of Arkansas during the month of October, 1907.

Q. Will you file that as an exhibit to your testimony?

A. Yes, sir.

The paper referred to is marked "C. J. McPherson Exhibit 46." Said exhibit is in the words and figures following to-wit:

For Exhibit 46, see Volume 8, page 5396.

1965 NOTE.—Mr. F. P. Johnson here files exhibits called for by the defendant.

The first statement is a statement of the capital stock and the amount of dividends paid by the St. Louis, Iron Mountain & Southern Railway for the fiscal years ending June 30, 1904, to 1909, inclusive.

Said paper is marked "F. P. Johnson Exhibit 47."
Said exhibit is in the words and figures following to-wit:
For Exhibit 47, see Volume 8, page 5412.

1966 The next is a statement showing the fixed charges of the St. Louis, Iron Mountain & Southern Railway for the fiscal years ending June 30, 1906 and 1907. It shows the fixed charges for the year, capital stock, dividends paid, and the owned mileage of the road.

Said paper is marked "F. P. Johnson Exhibit 48."
Said exhibit is in the words and figures following to-wit:
For Exhibit 48, see Volume 8, page 5414.

1967 W. M. WHITENTON, a witness of lawful age, being duly produced, sworn and examined in behalf of the Complainants, testified as follows:

Direct examination.

By Mr. MOORE:

Q. State your name and your place of residence?
A. W. M. Whitenton; my present residence is El Reno, Oklahoma.
Q. How long have you lived there?
A. About thirty days.
Q. Where did you live prior to the time that you went to El Reno?
A. For about twenty-eight months prior to going to El Reno, I lived in Little Rock, Arkansas.
Q. What is your occupation?
A. At the present time I am Manager of the Rock Island lines in Oklahoma, Arkansas and Louisiana.

1968 Q. What official position have you occupied prior to this time in connection with the Rock Island lines?
A. I started in the summer of 1900, with the Choctaw, Omaha & Gulf, as night operator, for about sixty days; then was chief dispatcher at Little Rock, on what is known as the Arkansas Division.
I held that position for about eight months and was then appointed Train Master in Oklahoma.
I held that position for two years and was then appointed Superintendent in Oklahoma.
I held that position for about nine months and was transferred to Little Rock as Superintendent of the Arkansas Division.
I was in that position for just a year, when I was transferred to Missouri as Superintendent, and remained there for twenty-seven months.
I was then transferred back to Little Rock as General Superintendent of what is known as the Choctaw District.
Q. What territory does that cover?
A. That covers all of the Rock Island lines in Arkansas, Louisiana, and the eastern half of Oklahoma.

Q. When did you begin railroad service?

A. I first began railroad service in 1882.

Q. Were you engaged in it continuously up to the time you came to the Rock Island line in 1900?

A. With the exception of two years when I was in
1969 school.

Q. Have you had opportunity to familiarize yourself with the various problems relating to the operation of trains, and to the investigation of the question of the expense involved in such operation?

A. Yes sir.

Q. Are you acquainted with the methods adopted by the railroads throughout the country in handling state and interstate traffic?

A. Yes, I think I am familiar with those.

Q. Is there any difference in the method of handling the traffic that is local in the state—the intrastate traffic, from the interstate traffic?

A. Yes, there is a difference in the way that it is handled.

Q. In your judgment, is there any difference in the cost of handling the two kinds of traffic?

A. Yes, there is a difference in the cost.

Q. I would be glad if you would state what the elements of difference consist of, and in making your statement accompany it with such explanations as occur to you, if necessary, as to the respect in which the two kinds of service differ as affecting the difference in expense.

A. My opinion, which is based on my experience as an operating man, is, that the intra or state freight of railroads is handled largely by the local freight train, and by local train I mean one
1970 that distributes and picks up package merchandise and does such other work at intermediate stations as is consistent with its run, after giving first consideration to the distribution of this package freight.

These local trains are scheduled, one in each direction, over a definite territory, and usually——

Q. In what period, one each day, or what?

A. One in each direction, each day, and generally six days a week.

On this character of train a great deal of the short haul business is taken care of.

This local freight train is more expensive to operate than the through freight train, and I might add right there, that by through freight train I mean one that handles carload freight, and makes no distribution of package freight.

I think the local freight train is the more expensive of the two classes of trains, and in my opinion, the cost per ton mile (if we put it on that basis) of freight handled on a local in Arkansas, is from four to seven times greater than the cost per ton per mile on the through freight train. In other words, the average excess cost is somewhere between four and seven times greater than the cost per ton per mile on the through freight train.

This extra cost is made up from different reasons. The character of freight handled has considerable to do with the cost of
1971 handling it. Package freight, ordinarily known as local merchandise, is more expensive to handle, per unit, than a carload of coal.

Another condition which will cause fluctuation in the ratio of cost is the country through which you operate. If the country is well settled and has a great many industries to serve, the work of the local freight train is much heavier, and the cost of operating it is necessarily increased.

Some of the more important items which go to make up the extra cost of the local freight train as compared with the through freight train, in my opinion, are as follows:

1st. The short haul of state freight as compared with interstate or through freight, as I have termed it, and a fixed local freight train service. In other words, a local freight train is scheduled, one in each direction daily, except Sunday. This local freight train schedule is, to a great extent, an arbitrary one, and runs regardless of whether there is full tonnage; while, generally speaking, the through freight trains are run only when there is tonnage to justify it.

2nd: The terminal expense: on all of the state freight, you have two terminals within the state. I consider the terminal expense in handling any freight, an item of very large proportion, and when you have to maintain so many terminals for your short haul freight, it naturally follows that your expense will increase in pro-
1972 portion to the number of terminals you are required to maintain.

3rd: The waste car and waste train space:

Take the Rock Island, with which I am more familiar than the others; our average loading for the month of July, 1909, was about eighteen tons per car.

Mr. HILL:

Q. That is local?

A. That is all—the average loading of all cars was about eighteen tons; while our merchandise loading in the state of Arkansas (and when I say merchandise loading I mean less than carload package freight) averaged only about 10,000 pounds, or about five tons, and my experience in operation is, that when you get about 10,000 pounds in your merchandise car, you have a good average load. That is about what all railroads get.

Mr. MOORE:

Q. You mean when you start out with that?

A. When you start out with that much from the initial point from which you start. Of course that load distributes en route. The average ton mile haul for that car will be much less than 50% of that amount.

Regarding waste train space—my observation (and I have watched the matter quite a good deal) is that you do not get anywhere near

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the efficiency of your locomotive on the local freight train. The distributive nature of the freight that the local is handling, makes it impossible to get full tonnage on the local train.

We are compelled to run these trains to protect the business
1973 of the various communities they serve, regardless of tonnage.

We are compelled to furnish cars to the various stations to take care of their business, regardless of whether there is a full carload or not. If a man offers a package of freight we have got to move it.

4th: The local train makes fewer miles per day than the through train.

My observation of that (and I think it is applicable to all lines in Arkansas) is that the mileage per day for a local freight train, is a run from 65 to 75 miles. The mileage for through trains per day is from 100 to 140 miles. I think the average is somewhere about 115 miles.

5th: The rate of pay of the crew operating a local train is greater by about fifteen per cent, than is the rate of pay of the crew of the through train.

6th: The local——

Q. That is general and common on all lines, is it?

A. That is general and applicable to all lines.

6th: The local freight trains, as a rule, operate only in daylight, tying up at night. I think that this is advisable and a good business proposition, made so by the character of the work: it can be handled more economically in daylight than it can at night.

The package freight-merchandise freight, is more liable to sustain loss or damage, if unloaded at night; it cannot get proper
1974 handling. Therefore I think it is advisable to run these trains in the daylight, as far as possible.

7th: It is my opinion that the train mile cost of a local train is more than double that of a through freight train.

This is due to the higher wage of the crew—longer time on the road, which is made necessary by the amount of work that it has to perform, and in order that you may understand what I mean by that, I will cite an example:

Take a railroad 100 miles long, or a freight district 100 miles long: if a through train goes over this distance in ten hours or less, the crew, under the Rock Island schedule (and this schedule is applicable to all the other roads in Arkansas, as they all have practically the same schedule of pay), is paid $16.71.

A local freight train going over this distance in ten hours, or less, the crew is paid $21.26.

If either train is in excess of ten hours, the crew is paid overtime at pro rata rates.

My observation and experience, gathered from the various reports that I analyze every month and go over every month, lead me to this conclusion in that it is a statement of fact that the local will make about 20% overtime, while the through freight will make five or six per cent overtime.

Add to this the additional fuel and supplies consumed on account

of the longer time on the road; the additional wear and
1975 tear on locomotives or equipment, from increased stops and switching, the cost of the local freight train will average more than double that of the through freight train.

This, however, does not include any extra expense in the way of waste space or terminal expense. I am dealing in this statement only with the actual cost of the crews on that train and the extra cost of fuel and supplies; the extra cost of additional wear and tear on the equipment, whatever that is—and takes no account of the waste space in the train, or terminal expense of the train.

8th: Extra switching: This is an element of additional cost, the setting out and picking up of cars, which is done largely by the local freight train. That, of course, is regulated by the different conditions.

We have first got to take into consideration this fact: that a local train must, or at least should, go over the road in daylight and distribute its high class freight, such as merchandise and package; then do such switching at intermediate points as it can do, and enable it to get to its destination in daylight, if possible. Of course it will handle out of its initial terminal a great deal of short haul carload business that sets out at the intermediate station, and in setting that out it naturally places these cars at an accessible place for unloading.

9th: The increased damage to equipment: the increased switching and handling of cars in the local business, in my opinion,
1976 has a very decided tendency to damage the equipment. In fact, I believe that somewhere about 70% of our total damage to equipment is done in the switching of cars. That is based simply on my observation and experience in trying to run down the elements that go to make up the cost of repairs to equipment, and which create the conditions which make repairs necessary.

10th. The casualty risk on freight is greater on local freight than on through freight, on account of more frequent handling of the freight and more liability to injury in switching service.

11th. Car hire is greater in the handling of the short haul business than it is in the handling of long haul business. It takes more cars to do the business. In my opinion, it requires somewhere from ten to fifteen times as many cars to accommodate purely state business where the haul is short, as compared with interstate business where the haul is long.

12th. The increased cost in the maintenance of yard tracks: The yard tracks at intermediate points are used largely for the accommodation of local state business and they require considerable attention and expense in maintaining them.

13th. There are many cases where special station facilities are necessary in order to properly handle the local
1977 state business. Of course this makes another element of increased cost of maintenance and operation.

Those are some of the main items that go to make up this extra cost of handling the local freight business.

Q. Are you acquainted with the conditions that obtain in the

operation of railroads on the principal lines in Arkansas, say the Iron Mountain, Cotton Belt and those lines?

A. I am fairly well familiar with the conditions on the Iron Mountain road in Arkansas. Once or twice in my experience, I have worked on the Iron Mountain——

Q. On its lines in Arkansas?

A. On its lines in Arkansas, and it is my opinion that those conditions are about the same on all lines in the state.

Q. The conditions that you have been testifying to, as the result of your experience on the Rock Island?

A. Yes sir.

Q. If a local freight train runs less than 100 miles, how is the pay of the men graduated? I mean with reference to the 100 miles?

A. They have to be paid a hundred mile minimum we cannot pay them any less than for a hundred miles.

Q. You stated, I believe, that the daily run on the way trains was from 65 to 75 miles, did you not?

A. Yes sir.

Q. And that is what involved what you call overtime? That is to say, if you run that average daily, you pay the men on the basis of 100 miles run?

1978 A. We have to pay for the hundred miles. For instance: say a local train runs 65 miles and they make that run in six hours. We have to pay them for 100 miles on the schedule, but we do not have to pay any overtime until they have been on duty more than ten hours.

Q. I understand that. What is the minimum of 100 mile pay that you pay the crew on the local trains, as compared with the amount that you pay for the same mileage on through trains? You spoke a while ago, I think, about the difference in cost; did you not say about 15% more?

A. Well, the 100 mile——

Q. You spoke a while ago about a difference in wage: what would the difference be in the amount paid the local crew for 100 mile service, and the through train crew for the same service?

A. Assuming that neither one made any overtime and made the run within ten hours?

Q. Yes.

A. Well, the through freight crew would get $16.71 and the local would get $21.26. That is correct, if my compilation is correct, and I think it is. I have made the figures and checked them over, taking the actual rate from our schedule, which is applicable also to the other lines.

Q. Will you give your views, now, as to whether there is any difference in the expense of carrying state passengers, as compared with interstate passengers.

1979 A. Yes, I think there is a difference in cost.

Q. Please state what you think produces that difference and what you think is the amount of the difference.

A. As in the case of state freight, there are various causes that go to make up——

Q. I am speaking about passengers now.

A. I know, but I say that, as in the case of state freight there are various causes that go to make up extra cost in state passengers. In my opinion, some of these reasons are as follows:

1st. The short haul of state passengers as compared with interstate passengers.

2nd. More terminal service; two terminals on each state passenger.

3rd. More stops, probably twice as many stops on the train handling state business as one handling interstate business. This is due to the character of the business. For short haul passengers a train must stop to let off and take on passengers.

4th. It requires more supervision to handle a purely state business than an interstate business, for the reason that more frequent handling of passengers is required, which in turn requires more attention on the part of the supervising staff.

5th. The greater hazard: I think this is natural, as in my opinion, the greatest hazard to passengers is brought about
1980 by getting on and off trains. Where the haul is short, you will naturally have more people getting on and off the trains than where the haul is long.

6th. The greater cost of repairs to equipment and locomotives, which is due to more frequent stops, which have a great influence on the wear and tear of equipment.

7th. More facilities are required for handling state than interstate passengers. Where you handle a class of travel on which the haul is short, you must necessarily provide facilities at each terminal point. The more you stop, the greater will be the increase in cost for facilities.

In my opinion, it costs somewhere from 25% to 50% more to handle local or state passengers, as compared with through or interstate passengers.

Q. Have you made any special investigation or test for the purpose of determining in any way the relative efficiency of the service applicable to state and interstate traffic, either freight traffic or passenger?

A. We made some tests on freight traffic in Arkansas.

that is about the date that those tests were made.

A. I think from about November 22 to about December 21, 1908; that is about the date those tests were made.

Q. Will you state what the test was and what was developed through it?

A. The tests were made by putting men on trains and see-
1981 ing just what each train handled, with regard to state and interstate business.

We did not work up all of that data, but we did take ten local freight trains and ten through freight trains, and worked up some data as to the per cent of state and interstate business on those trains.

Q. Who had that done; was it under your supervision?

A. It was partially done under my supervision. I outlined many

of the methods used and went over a great deal of the information at the time it was compiled; that is, at the time that the men would make their test on the train. It all came to my office and I personally handled a great deal of it. The actual figures taken from these reports on the 10 local freight trains and 8 through freight trains, were compiled by some of our accounting officers from these reports and worked by the men we had on the train.

Q. What did that show, as to any bearing in regard to the matters that you have been testifying about?

A. On the 10 local trains, the percent of state freight to the total freight handled, was 17.9%. In other words, approximately 18% of the total was state freight, and 82% was interstate freight on those 10 local trains.

That 17.9% of state freight handled on those 10 local trains, represents about 60% of the total state freight handled on the 18 trains that was worked up.

The L. C. L. or less than carload state, to the total state handled on the 10 local trains was 11.2%.

1982 The less than carload interstate to the total interstate handled on these 10 local trains was 4.6%.

The percent of revenue freight to the total tonnage handled by the local freight trains was 33.6%. In other words, we were handling dead weight on local trains of 66.4%, and a revenue weight of 33.6%.

On the through trains the commercial freight was 41.1% and the dead weight was 58.9%.

The car miles on the local freight (the cars that had this package merchandise or less than carload freight) made 17.6% of the total mileage.

The straight carload freight (that is, freight that did not distribute; that went to a station, was set out and unloaded), made 48.5% of the total car miles.

The empty cars handled on the local freight made 33.9% of the total mileage, or a little better than one-third; while on the through freight the car mileage was 87.7% of the total; the empty mileage 12.3%.

In that 87.7% I have included as loaded cars the merchandise cars that moved in those through trains from one important center to another and was set out, but the freight was not distributed by the through freight trains; simply moved from one point to the other.

On the eight through freight trains, the percent of state freight handled on those trains, to the total freight handled, was 5.1%; or, you might say, that of the total freight handled

1983 by those eight trains, 95% of it was interstate freight and 5% was intrastate freight.

Of the 18 trains combined, the through freight trains and the local freight trains, the percent of state freight handled to all was 9.2%. In other words, of those 18 trains, we will say 91% was interstate and 9% state freight.

The car miles made on those 18 trains—loaded car miles was

79.4% of the total; 20.6% being the empty car miles made on the 18 trains.

Q. How many local and how many through trains were involved in that test?

A. Ten local and eight through.

Q. You spoke in one place of there being ten of each kind.

A. No, there was a total of 18 that we worked up; 10 locals and 8 through.

Q. I believe you spoke somewhere in your statement about the cost per ton: for what purpose and to what extent do you measure the cost of transporting a body of freights in that way, by the ton?

A. I do not know that I understand just what you mean by that, Mr. Moore.

Q. I refer to a statement made by you: I believe you said it cost from four to seven times more, per ton, did you say, or per ton mile?

A. Per ton, per mile.

1984 Q. To move the one kind of freight than the other?

A. Yes sir.

Q. I want to ask you this: is it practicable to divide the expense of operation as between state and interstate business, on the basis of ton miles?

A. I do not think it is; I do not believe it is.

Q. Why do you think it is not—just in a general way? I do not care about going into detail on that subject.

A. When you go to consider that difference, of course you take into consideration the money that you earn on the two classes of business. If you have that and then want to arrive at the expense for doing the two classes of business—it seems to me that you must necessarily put them both on the same basis, or consider from the revenue side.

Q. Your idea would be then, that the revenue basis is the proper basis to make a division of expenses between the cost of conducting state and interstate business, is it?

A. I think it will probably more nearly represent the actual difference, or actual cost, than any other basis that I have heard discussed and talked over.

Q. Mr. Whitenton, I want to ask you if all of the merchandise freight is distributed by these local trains you have described?

A. On the territory that I am familiar with, all of the merchandise is distributed by the local freight trains that I have just described.

1985 Q. I believe you stated that less than carload freights are carried on through trains?

A. Yes, there are some——

Q. How are the cars loaded that carry less than carload freight in through trains; are they loaded usually like the other cars, as to their capacity?

A. As an example of that I can give it to you in this way, taking an actual case that I have in mind:

At Little Rock we load a car of merchandise every day for distribution between Devall's Bluff and Searcey; it breaks bulk at De-

vall's Bluff. That car is handled from Little Rock to Devall's Bluff in a through freight train; set out there, and the agent takes out the Devall's Bluff freight the next morning on his platform; then the local train that does the work between Devall's Bluff and Searcey takes the car up and distributes the balance of the freight.

We have a number of cases of that kind.

Another case in point is this:

We load on our Little Rock platform a carload of merchandise that moves from Little Rock to Fordyce, on a train that leaves Little Rock at about 9:00 P. M., and gets to Fordyce the next morning.

Q. A through train?

A. Yes. That car simply sets this merchandise car out on the side track and the agent at Fordyce takes his freight out, and the local which leaves Haskell at seven o'clock in the morning,

1986 when it gets down to Fordyce, picks that car up and distributes the balance of the freight.

Q. Then the distribution of less than carload freight that is carried in through trains, is made by local trains, as you have described them?

A. Yes sir.

Cross-examination.

By Mr. HILL:

Q. Mr. Whitenton, is there any difference between state and interstate traffic, in the handling of it?

A. Judge, I don't know that I just get your meaning.

Q. Does not state and interstate traffic move in the same cars, by the same men, and pulled by the same engine?

A. Yes, sir, that is true.

Q. In both the questions and answers in your testimony there seems to be an interchange in the word local as compared to state, and through as compared to interstate; do you mean it that way?

A. I mean this: that in my belief the state business is largely a short haul business and for that reason it is naturally handled on the local freight trains. That is the only distinction I make between the handling of state and interstate.

Q. The length of the haul?

A. Yes sir.

Q. And owing to the length of haul, would more probably

1987 be handled on local trains?

A. Yes, the short haul business more naturally falls to the local freight train in the conduct of the business.

Q. Suppose 50% of this short haul business was carried on through trains, and 50% was carried on local trains; what would you say then of the comparative expense of state and interstate, or long and short haul?

A. I do not believe that would make any material difference in the cost. I do not see just how it would.

Q. Why would it not?

A. Well, there still is the extra cost of terminals and facilities,

and the setting out and picking up. There is still all of that expense.

Q. Suppose one-half of that kind of business was carried on through and one-half on local?

A. Those facilities would still be necessary, Judge, to take care of it; they would still be necessary.

Q. The facilities would be necessary, but would the cost attendant upon the same be in the same proportion that you have given?

A. If that were a fact that it was equally divided the extra cost might not be so large. That would be dependent largely upon the character of the freight—how you handled it.

Q. Assuming the handling is just as it is now, and say that this short haul business, which you regard as the more expensive
1988 on account of this short haul, that one-half was carried on your through trains: would that be any more expensive than a long haul business carried on through trains?

A. So far as the train expense—what I mean by train expense, is the cost of the crew, etc., there would be no difference.

Q. Now, take your long haul business carried on the local train. Some of it, according to these figures you have given here—would there be any difference in the expense as between that and the short haul business carried on local trains?

A. The long haul business carried on local freight trains, in my opinion, has a tendency to reduce the cost per ton per mile, of the operation of that train.

Q. I presume so, but does it cost any more? My question is, does it cost any more to handle that business on a local train, than it does the short haul business on a local train?

A. Yes, it costs more in this way, that the cars are not moving the same distance within a given time, and the expense of equipment, etc., is greater.

Q. You seem to be comparing the two trains. I am talking about a shipment of long haul freight on a local train, as against a shipment of short haul on a local train: is there any difference in the cost of those two shipments on that train?

1989 Mr. MOORE:

Q. The shipment, you say, of a long haul and a short haul?

Mr. HILL: Yes; on a local train.

A. Judge, I want to give you the answer just as near as I can. I do not want to be in the attitude of dodging anything, but if I understand you right, I still think that it would cost more per ton per mile to handle the long haul business on a local train, than it would on a through freight train.

Q. That is not my question, Mr. Whitenton. It seems I am unable to make myself clear.

Suppose you have a shipment from Little Rock to Van Buren, 160 miles, which we will call a long haul shipment, of merchandise freight; and a similar shipment of merchandise freight, of the same bulk, to Morrelton; and both of those shipments are put on a local train that goes from Little Rock to Van Buren; both of them carried

in the same car: what is the difference in the cost of those two shipments?

A. The cost per ton per mile should be greater on the shorter haul than on the longer.

Q. For train expense?

A. You do not get just your train expense—of course if they are both handled in the same way, there would be the same train expense.

Q. There would be no increased train expense on such shipment?

A. No, there would be no increased train expense, taking
1990 the wage and items of that character; that is, the same rate would apply——

Q. I am giving you two identical shipments in my illustration—the same rate; same bulk; one going to Morrelton and one to Van Buren, and carried in the same car; I want you to explain where the difference in cost comes.

A. The difference in cost would be——

Q. I am talking about train expense.

A. As I said before, there would be no difference in train expense for the distance handled there.

Q. The fact that a shipment goes out of a state and comes into a state and in the course of its transit passed over a state line, does nothing to the cost?

A. No, we don't know anything about state lines in the operating staff of the railroad.

Q. When you talk about intrastate and interstate freight, you are just talking about them for the purpose of a lawsuit, and not for the purpose of operation; in operation there is no difference?

A. As I stated a moment ago, Judge, my idea on this is based entirely upon the length of the haul—the long and short haul?

Q. That is the operative term, and intrastate and interstate is the term when you get into a lawsuit?

A. I guess that is probably true, I don't know.

Q. You give us figures on the test that you made down
1991 on your road: when did you make that test?

A. It is my recollection now that that test was made between November 22 and December 21, 1908.

Q. What runs of trains were taken?

A. We tried to cover everything in the state of Arkansas.

Q. Do 18 trains cover everything you have in Arkansas?

A. We took only 18; we have data on everything for that period, but we took only 18——

Q. Then you did not give us the benefit of anything but 18?

A. That is all we worked up, Judge.

Q. Were those 18 single trains or 18 trains a day?

A. Eighteen single trains.

Q. Where did those 18 trains run?

A. As I recall now, some of them ran between Little Rock and Hopefield; some between Little Rock and Booneville; some between Little Rock and Eldorado; some between Tensman and Crossett; that is my recollection.

Q. How many freight trains does your road run a year in Arkansas?
A. I do not know.
Q. How many a day then?
A. Oh, I could figure that out, of course——
Q. I would like to know somewhat within the range of what it is; I could not expect you to give an absolute accurate answer,
1992 but you ought to know, generally speaking, how many freight trains you run in the state in a day.
A. I can figure up now about 2 scheduled freight trains which we have in the state of Arkansas.
Q. By schedule do you mean local?
A. Local and through, both; they are both scheduled.
Q. That is 32 per day?
A. Yes sir.
Q. These 18 that you referred to were taken out of a period of ten days?
A. November 22 to December 21.
Q. A period of about thirty days. In that thirty days it would be 960 scheduled trains that you would run in that period?
A. If that is what it figures out, that is what it would be about.
Q. Within that period you would have some extra trains run, would you not?
A. Yes sir.
Q. In round numbers it would be something like 1000 trains run in that period?
A. I expect so.
Q. And you have given us the benefit of 18 out of 1000?
A. That is what we have taken; whatever that would be.
Q. Do you think that would fairly represent the percentages of your traffic as you have given them in those 18 trains?
1993 A. I think that would be fairly representative: that is my opinion about it.
Q. Do you know that there are about 1300 trains in Arkansas, on the Iron Mountain alone, in one month?
A. I don't know anything about that.
Q. But you think these 18 trains out of 1000, would be fairly representative of the percentages as you have given them here?
A. Yes, I think it would, because in taking that we represent all of the territory; practically all of the territory.

Mr. MOORE: You do not intend to testify that there are 1300 cars a month——
Mr. HILL: No, I asked him if he knew.
Mr. MOORE: Mr. McPherson says you are mistaken.
Mr. HILL: How many are there, Mr. McPherson?
Mr. MCPHERSON: I should think 15% of that.
Mr. HILL: Local trains run in a month.
Mr. MCPHERSON: Yes.

Mr. HILL:

Q. What do you define a terminal expense to be, Mr. Whittenton?

I find some difference of opinion about that, and I would like to get your definition of what a terminal expense is, as you have referred to it in your testimony here.

A. I understand by terminal expense, anywhere that freight originates. In other words, its initial and final destination—the point of origin and its destination.

1994 Q. That is your definition of a terminal expense?

A. Yes sir.

Q. How do the expenses of terminals compare one with another—extensive terminals, say of a city like St. Louis, with a terminal in a small country town?

A. I do not know; I have never had any experience in a terminal like St. Louis, Judge.

Q. Say Little Rock, then: how does the terminal expense at Little Rock compare with the terminal expense at Plummerville?

A. The terminal at Little Rock, in my opinion, would be more expense; a larger terminal as a general thing is.

Q. I do not mean that the terminal would be more expensive; I mean the terminal handling of a ton of freight.

A. That will depend, of course, upon the facilities. You might spend a great deal of money and get a facility that you could handle your business very cheap with, but if you did not have a modern facility your terminal expense for handling might be heavy.

Q. I am not talking about what might be. I am trying to get down to actual facts. In your experience as a railroad operating man, which do you think is the most expensive, a terminal like Little Rock, or a small country town like Plummerville?

A. Well, take our expense (and when I say our, I mean the Rock Island) at Little Rock; our terminal expense there is high because our facilities are not the best, and the terminal expense at Little Rock, compared with a place like Brinkley—local trains that run to

1995 Brinkley, it is higher at Little Rock, per unit, than it is at Brinkley.

Q. What do you say about that as a general proposition, whether the terminal handling at a small country town or at the larger cities, is the more expensive handling, per ton?

A. I expect that the cost at the smaller terminal is larger per ton, than at the larger terminal, because of the volume of business handled.

Q. Why is that?

A. It is due to the amount of business that is handled there.

Q. Would a larger terminal expense, distributed over larger tonnage, reduce the amount per ton at large stations to something like what it would be at the small stations? Is that the idea?

A. That is the idea.

Q. Of course you understand how cotton is handled in Arkansas?

A. Yes, I know something about it.

Q. How many terminal handlings does it have before it gets out of the state?

A. Well, it generally has about three handlings before it gets out of the state.

TORN PAGES

Q. Three terminals in the handling of cotton, as a general proposition, including its final shipment to the east?

A. I think that about covers it.

1996 Q. How is grain handled?

A. We have very little in Arkansas that is purely state business.

Q. Yes, I suppose intrastate grain traffic is what has been denominated in this case as a "negligible quantity."

A. I don't know just what that is. I know our grain intrastate in Arkansas is very little.

Q. I am speaking of grain shipped into the state and distributed throughout the state: that is very large, is it not?

A. Yes.

Q. How large is that?

A. Generally that comes into Little Rock; goes to an elevator; is unloaded, reloaded and shipped out again.

Q. How many terminal handlings in the state, taking the usual course?

A. If delivery is in the state—its final destination when it comes out of the elevator, it would have three, I guess.

Q. How is lumber handled that is carried into the planing mills on the rough material rates: how many handlings does that have?

A. You refer to the rates——

Q. I said carried in on the rough material rates. You of course understand that movement?

A. I don't know that I do; I don't profess to know anything about the rates; I don't know a thing in the world about them, but

1997 I know that lumber is loaded at the smaller mills, for instance, and some places loaded from sidings—mills in the interior, in the rough, and hauled to some larger planing mill and there unloaded; goes in and is planed and finally comes out and is loaded again and goes to its destination.

Q. A great majority of that goes to its final destination out of the state, does it not?

A. I expect that is true.

Q. It goes out of the planing mill (whether out of the state or not) or to some other point in the state, on a rough rate from the point of origin, does it not?

A. I do not know a thing about it, Judge.

Q. Is that out of your jurisdiction?

A. Yes, that is out of my jurisdiction.

Q. Well, assume that that would be the case; then how many terminal handlings would you have of that—say it started from some little place on your line and is carried to a larger place where there is a planing mill and there dressed and then shipped out to St. Louis?

A. There would be the same as in the grain; or cotton rather more nearly describes it. There would be the handling at the point of origin; it would have to be handled again where it was unloaded in the planing mill, and again when it was loaded up and shipped out.

1998 Redirect examination.

By Mr. MOORE:

Q. Mr. Whitenton, do you say a larger part of the expense incident to the handling of intrastate business is the switching that grows out of it; the terminal expense and the additional train cost involved in handling it, owing to the consumption of fuel and supplies of that character, which you say is increased by reason of the switching service and wear and tear of equipment? Those are part, at least of the elements that enter into the increased cost of handling state business, is that what I understand you to say?

A. Yes sir.

Q. Now, suppose, taking the example put to you by Judge Hill, that you have a local way train going from Little Rock to Van Buren; 50% of your loading on that train is interstate freight going to Van Buren, and the balance of the loading on that train is freight for local distribution; would the way freight going to Van Buren produce any expense in the way of switching or things that grow out of it, and the station service that is required—would there be anything of that sort required in hauling that freight through from Little Rock to Van Buren straight?

A. At intermediate points, you mean?

Q. Yes.

A. No, it would require there only the initial and the final.

1999 Q. There would be no service involving switching and delays, increased consumption of fuel and supplies on account of that through freight that was shipped from Little Rock to Van Buren?

A. No.

Q. And yet there would be a very large additional expense growing out of the necessity of intermediate service in distributing the local freight, would there not?

A. Yes sir.

Q. The average length of haul between state and interstate, would in that case, and generally, govern to a large extent the cost of handling the traffic, regardless of whether it was handled in a local or through train, would it not?

A. I think so, if, as I stated before, it was a question of long and short haul as to the distributing expense.

Q. Speaking of terminal stations—terminal service, the sense in which you use that word as between state and interstate business, is that service connected with receiving of freights at the places at which they are received for shipment, including everything incident to receiving them—clerical labor and every sort of labor and the service that is incidental to the delivery of it at the station to which it is consigned: that is what constitutes terminal expense, is it not?

A. That is the terminal expense, certainly.

2000 Q. In that sense, is it or is it not true that every station, as to the freights received or shipped at that station, is a terminal expense?

A. Most assuredly.

Q. You were speaking about terminal expense; Judge Hill asked you if there were three handlings on cotton in the movement he mentioned, and which I need not go over again; he said terminal handlings, and you stated there were three terminal handlings: are there three terminal handlings in the sense that you used that, in the cotton movement to which Judge Hill called your attention?

A. Well, there are three handlings——

Q. I know, but are they terminal handlings, in the sense in which you use that with reference to the difference of expense as between state and interstate?

A. When I answered Judge Hill's question I thought he was asking how the cotton was handled that moved out of the state. It is loaded at the local station, moved to the compress, there unloaded and loaded up again; there is some expense on both at the compress point to the railroad company.

Q. Speaking of grain: is that loaded by the railroad company or the owner?

A. That is loaded by the owner.

Q. In regard to the rough material, forest products: is that handled in loading or unloading, by the carrier or by the owner?

2001 A. By the owner, in carloads.

Q. I will get you to explain a little more fully in regard to the three handlings of cotton that you spoke of: just as far as you know, state what the handling and expense incident to the handling of each of the three handlings is.

A. Well, the expense at the initial point, or at the country station, we will say for instance, at Ola, going to Little Rock—we pay so much a bale for loading that cotton in the car; that goes to the compress; it is unloaded by the compress and we have a man there to check it out; the railroad pays that check clerk.

Q. That is service rendered by the railroad at the compress?

A. Yes, when the cotton is unloaded. Now, when that cotton goes out of the press we still have a man there to check it as it goes into the car.

Q. It is loaded by the compress, is it?

A. Yes, it is loaded by the compress; that costs the railroad at the compress—the unloading and loading at the compress does not cost the railroad, but we —at least the Rock Island—checks its cotton out to the press, and into the cars from the press again.

Q. Save the expense of the check clerk, that is one handling, so far as the expense of the handling is borne by the Railroad Company: that is, the handling at the place of origin?

A. Well, there is some other expense at the compress point to the railroad.

2002 Q. Please explain that.

A. Taking into account the way-bill, and then billing the cotton out again after it is compresed and loaded up.

Q. In shipping the cotton out from the compress you have pretty much the same service as at the point of origin, except that the compress loads it?

A. Yes sir.

Q. But in unloading it there you have a check man to take account of it?

A. We have a check clerk to check the cotton to the compress, to check over and receipt for it; when it is compressed and loaded we have him check it into the car and receipt to the compress for it.

Q. And bill it, I suppose?

A. It has to be way-billed.

Recross-examination.

By Mr. HILL:

Q. Mr. Whitenton, is not the company also at the expense of shipping that car to the compress, taking it into it and taking it out?

A. Oh, yes, a car has to be switched into the compress to be unloaded, and picked up by a switch engine again when it is loaded and taken out.

Q. Mr. Moore spoke about the car being loaded and unloaded by the compress: is not all carload freight loaded and unloaded by the shipper and consignee?

2003 A. What I call carload freight is—of course we load cotton ourselves at the local stations.

Q. That cotton goes into the compress less than carload, does it not?

A. I think that is true.

Q. Of course, you make up a full car of it if you can, but it will be made up of less than carload shipments constituting a car of cotton?

A. It is considered a less than carload commodity.

Q. Until after it is compressed and re-shipped; then is it not shipped as a carload commodity?

A. I don't know as to that, Judge Hill; I would not say positively.

Q. As a matter of fact, are not these three terminal handlings more expensive than the average terminal handling of commodities which your road handles in Arkansas, taking into consideration the less than carload movement, the casualty risk and the extra men you have there to check it out and in: would not that make the terminal handling on cotton more expensive than the average terminal handling on your traffic in Arkansas?

A. Well, it would be more expensive than some other traffic; I don't know how it would average up with the general line. I do not believe it would be more expensive than the terminals necessary for handling high class freight, such as merchandise package freight or freight of that character.

2004 Q. I expect that is true, but it would be more expensive than handling low grade commodities, such as coal, brick, sand and hay?

A. I think it would.

Q. Well, thinking over the difference, would you not say that

the average of each one of those three terminal expenses would be higher than any other one terminal expense on the average of your traffic?

A. I will answer that in this way:

I think regarding the handling of cotton, that the cost of handling it would probably be up toward the top of the list as compared with other commodities.

Q. And the terminal cost of handling would be up toward the top of the list?

A. That is what I refer to, the terminal cost; I had that in mind in the answer.

The MASTER:

Q. Who pays the compress for compressing the cotton?

A. I don't know.

Mr. HILL:

Q. You estimated the cost of handling state business higher in Arkansas, than you did in Missouri, did you not?

A. Well, I don't know about that; it has been some time since I testified in the Missouri case.

Q. I have a copy of what I believe is your testimony. This was a question and answer, as I find it here, by Mr. Hagerman:

2005 "Q. What is your judgment as to the extra cost of doing state freight business over the interstate?

"A. It is my judgment that the extra cost will run from three to six times as much.

"Q. Do you make that estimate upon a ton or revenue basis, or just generally leave the court to determine what is the true basis?

"A. I had in mind when I answered the question, a ton mile basis.

"Q. Putting it on a revenue basis, what would you say, if it makes any difference?

"A. My opinion on that would be it is about twice as much."

Q. Is not that a correct statement of your testimony?

A. I think that is probably correct.

Q. You stated over here that you thought the revenue basis was a better basis of dividing the expense between state and interstate, than the ton mile basis: why do you say that?

A. It would seem to me that you are conducting a business on the amount of money you get out of it, and you want to know what it costs you. It seems to me that you have got to take the money side on both ends of it to get at that.

Q. Why would you use the revenue derived from your state business as a factor to determine the cost of your state business?

2006 A. I am not qualified to answer that because I am not an expert on any of the theories that have been put forward as to the division. It just seems to me that if I was running a business, I would want to know what I was getting out of it and what my expenses were. I would take the money end both ways.

You understand, as an operating man I know nothing about the

revenue of the company, in so far as what we are earning on any class of business is concerned.

I simply have to do with the expense of conducting the business, and here, in keeping out tabulations and figures, we figure what it is costing us to do our business.

Q. As a business man, do you think that you ought to take the gross earnings to determine the cost of conducting that business?

A. As I said, I am not qualified—if I was running a dry goods business and wanted to know what I was making out of it, I certainly would want to know what the gross earnings and operating expenses were.

Q. But here the gross earnings are taken to find out what the operating expenses are?

A. I don't know what they are taking.

Q. Then you do not understand what theory they are basing this on, do you?

A. No, I do not.

2007 Redirect examination.

By Mr. MOORE:

Q. You made an affidavit in this case in August 1908, did you not, prior to the time the application for an injunction was made at St. Paul?

A. Somewhere about that time; I do not remember the exact date.

Q. Do you recall what your statement was then, as to the difference in expense—in that affidavit?

A. If my memory serves me right, my affidavit was to the effect that the extra cost was more than twice as much.

Q. I want to ask you if your views have undergone any change or modification since you made that affidavit and testimony in the Missouri case? If so, state fully in regard to it, and what brought it about.

A. When I made the affidavit in 1908, in the Arkansas case, it was at a time that I had not given the matter any special study or thought. I was simply basing my testimony on my experience, without having made any special investigation. I made what I believed was a conservative statement.

After I got into the matter and studied the various elements that go into the handling of the business, why, when I testified in the Missouri case, I thought that that was about the ratio in Missouri, being familiar with the Rock Island lines in Missouri, on account of having operated them for 2½ years. I put that figure,
2008 which I considered at the time a conservative figure of the extra cost in Missouri, for the Rock Island lines.

Now, my testimony in this case and the figures that I have given here, are based upon what I now believe, after having considered the matter further and taking into account various items of what seem to be to me, extra items of cost. For Arkansas my figures give about the same ratio that I think one bears to the other.

In other words, the more I go into this thing, the more thoroughly

I become convinced that there is an extra cost in handling the state business as compared with the interstate because it is largely a short haul business. That which I put in my first statement or first affidavit, was entirely too conservative, but it is greater than that first affidavit.

Mr. MOORE: We offer "The Western Classification No. 47" as an exhibit, which is accordingly marked "Plaintiff's Exhibit 49", and which exhibit is in the words and figures as follows, to wit:

For Exhibit 49, see Volume 8, page 5416.

2009 The Complainants here rest.

2010 R. E. KIMBELL, being recalled on behalf of defendants, testified as follows:

Direct-examination.

By Mr. HILL:

Q. You have been sworn as a witness in this case?

A. Yes, sir.

Q. I wish you would turn to your Exhibit #32; what does that show your revenue from State freight traffic to have been for six months ending Dec. 31st, 1907, in the State of Arkansas?

A. $173,064.45.

Q. What does that Exhibit show your revenue on interstate freight traffic in the State of Arkansas for that period?

A. $1,597,230.02.

Q. Please turn to Exhibit 35, that is one of your exhibits, what does that exhibit show the state tons carried one mile in Arkansas to have been for that same period; that is, six months ending December 31st, 1907?

A. 8,512,807.

Q. What does it show on interstate business?

A. 184,831,455.

Q. If you divide the revenue by the tons carried one mile, on which that revenue was earned, the result will give you the average revenue per ton per mile will it not?

A. Yes, sir.

Q. Please make these two calculations, and tell what was your average revenue per ton per mile in Arkansas, on these two classes of business, for the six months ending December 31st, 1907?

2011 A. On the State business, the average revenue per ton per mile $0.0203.

Q. That is 20 mills, to put it in mills?

A. Yes, sir.

Q. It would be 20 mills and a third, to put it in round figures?

A. Yes, sir.

Q. On the interstate business?

A. $0.0085.

Q. That would be 8 mills?

A. 8½ mills, you might say.

Q. We have 8.64 mills here, the way we figured it?
A. I have figured it over, it is 0086.
Q. That would be 8 mills and 6 tenths?
A. Yes, sir.
Q. I hand you what purports to be a statement of the St. Louis, Southwestern Railroad Co., for the State of Arkansas, statement of trans-State, Interstate and State freight, handled during the month of January, 1909, and ask you if you recognize that statement?
A. Yes, sir.
Q. Is that a correct statement of what it purports to be?
A. Yes, sir, it appears to be a copy of a statement I filed.
Q. You gave that statement to Mr. Wharton?
A. Yes, sir.
Q. I will ask you to attach this to your deposition and mark it Exhibit "A."

2012 For Exhibit "A," see Volume 9, page —.

A. I will do so.
Q. I call your attention to the statement that the average revenue per ton per mile shown in Exhibit "A" is 39.867 mills; that is on state business?
A. Yes, sir.
Q. And what is the average revenue per ton per mile of the interstate business?
A. 9.454 mills.
Q. During the time that your Exhibit- 32 and 35 were made up, that is, for the six months ending December 31, 1907, the State revenue was produced under Standard Distance Tariff #3?
A. Yes, sir.
Q. During the time that your Exhibit "A" was made up, that is for the month of January, 1909, your revenue was produced under tariff made by your own company, without any State regulation, was it not?
A. Yes, sir.
Q. That was the tariff that was put in November 2nd, after the injunction was obtained by you in this suit, was it not?
A. Yes, sir.
Q. You made an increase in your interstate rates, about the time or shortly after you increased your state rates, did you not?
A. That is true, yes, sir.
Q. Now, I will ask you to compare the amount of average revenue per ton per mile on your state business in January, 1909, of your state business in this period of six months, and com-
2013 pare the same figures with your interstate figures, and I will ask you if this is not a fact, that your interstate revenue per ton per mile was increased 9.4% and your state revenue was increased per ton per mile 96.1%; there is the calculation that might aid you?
A. The increase in interstate business was 9.4%; state business was 96.1%,: figured on the average rates.
Q. Turn to exhibit #33 please?

A. Yes, sir.

Q. It shows your gross freight revenue in Arkansas for the six months ending December 31, 1907, to be how much?

A. All sources $1,795,355.49.

Q. Now take the state?

A. State, $173,069.45.

Q. Now interstate?

A. $1,597,230.02.

Q. Now, if the rates which produced the increase in average revenue per ton per mile shown in your January, 1909 statement of 96.1 per cent on state freight and 9.4% on interstate freight had been in effect during the last six months of 1907, I want you to calculate the gross revenue of your freight traffic for that period. Assume now that that increase had been in effect during that period?

A. That is quite an assumption; to assume that that same volume of business and same rate would obtain for any period like six months. Now, is it necessary for me to figure this rate at

2014 this time.

Q. You want a little time to figure it?

A. Yes, sir.

Q. You have all the data necessary to make that?

A. Yes, sir.

Q. Now, I want you to show from that calculation, the increased amount of expense that would have been apportioned to the state traffic under that increase, and the decreased amount apportioned to the interstate traffic under that supposed increase, following the line of your Exhibit #23, except applying these actual figures to that six months,—to what was the illustration there?

A. You want an Exhibit 23, on the basis of that increase.

Q. On the actual figures of your six months, assuming the increase of your January business had obtained during that six months?

A. All right, sir.

Cross-examination.

By Mr. MOORE:

Q. When did the rates that were put in by the railroads, after the injunction granted in these cases, take effect?

A. November 2nd, 1908.

Q. That was the state rates?

A. Yes, sir.

Q. Was the adjustment of the interstate rates made at the same time, or did that come later?

2015 A. I do not understand it was made at the same time; it followed in the course of business.

Q. How long after November 2nd, 1907, did it take to make the readjustment of interstate rates, so as to form them and keep them in harmony with the changes that had been made in the state rates?

A. I am of the impression that it took quite a time to get them all adjusted.

Q. Would the re-adjustment be reflected in the business of the following January?

A. I think not, sir.

Q. What effect would that have on the value of the comparison that is made on these figures here?

A. My idea is that it would make them very disproportionate.

Q. I believe your statistics in this case, show the average haul of state and interstate business, does it not?

A. Yes, sir.

Q. What is it?

A. You want it for the six months we are discussing?

Q. Yes, sir, I will say for the six months ending December 1907?

A. On state business, 43 miles; interstate business, 232 miles; that refers to freight.

Q. Now, I want you to state, in view of that difference in the length of the haul, between state and interstate business, and of the difference that would naturally exist in the character of commodities involved in state hauls and interstate and trans-state hauls, what, in your judgment, is the value of the comparison ob-

2016 tained in the exhibits we have just been asked for?

A. Since the question has been raised, if there is no objection, I would like to have an opportunity to analize the question and answer it.

Q. You prefer to answer it later?

A. I would.

Witness excused to be recalled.

2017 G. W. SWAIM, being first duly sworn and examined, on behalf of the defendants, deposed as follows:

Direct examination.

By Mr. HILL:

Q. State your name, age, residence and occupation?

A. G. W. Swaim, 36 years old, I live here in Little Rock; I am rate clerk of the Railroad Commission.

Q. How long have you been rate clerk of the Arkansas Railroad Commission?

A. Since May, 1904.

Q. During that period of time, have you made a study of the rates prevailing in Arkansas, state and interstate?

A. Yes, sir, I have made somewhat of a study of rates, state rates especially.

Q. Are you familiar with the records of the Arkansas Commission, and of its proceedings, in regard to rate matters?

A. Yes, sir, fairly familiar, I think.

It is agreed, that no objection will be raised to this witness testifying as to the facts which he has obtained from the records; that

he is to give references so that they may be verified, and the records will be held accessible to the plaintiffs at all times.

Q. Mr. Swaim, have you prepared a memorandum of the changes which have been made in the Arkansas intra-state tariffs, since the joint rates were put in effect in 1903?

2018 A. Yes, sir.

Q. I believe 1903 is the correct date when the joint rates were put in effect?

A. Yes, sir, July, 1903.

Q. I wish you would commence with the changes that were made then and follow it up with all changes that were made in the tariff all changes that would affect rates from July, 1903, up to the time of the granting of the injunction in this case, September, 1908?

A. I have made a compilation in this form; I will give you the headings; the article and the reference to the amendment of the tariff or classification, where the change is found; the next column is under the head of remarks; I show what the change was from and what it was to, and the next column is the date effective of the change, and the basis that I used to determine the amount of the change, the extent of the change, figuring the rates for 25, 50, 75, 100 and 200 miles, at both the old rate and the rate to which it was changed, and I take the totals of those rates for those distances and from these totals, I figure the percentage of the reduction; I believe they are all reductions more or less. Which statement is as follows, and is made a part hereof as exhibit "B." For Exhibit "B," see Volume 9, page 5762.

Q. The first item I see in your statement, is L. C. L. rate on bagging and ties, which amounts to a reduction of 39% on that rate, calculated as you have explained; I will ask you if you know

2019 the extent of the movement of that commodity, under this rate?

A. No, sir, I do not.

Q. Have you any data by which you could make an estimate of the extent of that movement?

A. No, sir, not so as to give you a figure, but I can give some data that will throw some little light on it.

Q. Give us that.

A. The railroads in their reports to the Commission, make what they call a tonnage statement, uniform in all the reports, and they report the tonnage under the following general headings: Products of Agriculture, animals, mines, forest, manufactures, merchandise and miscellaneous; in Products of Agriculture they include grain, flour, hay, tobacco, cotton, fruit and vegetables and other products, and Products of Manufacture; they include petroleum, and other oils, sugar, naval stores, iron, pig and bloom, iron and steel rails, other castings, and machinery, bar and sheet metal, cement, brick and lime; agricultural implements, wagons, carriages, etc.; wines liquors, household goods and furniture; now, they are drawn out that fine; they are classified into that many classifications; on this report, there is no item which covers bagging and ties; I suppose it

is included, on account of its insignificance, with merchandise shipments; I will give you the percentages of merchandise.

Q. This is an L. C. L. movement; do you know what the percentage of L. C. L. intra-state movement is to the entire movement?

2020 A. No, sir, I do not; I have heard it variously estimated. I think it is a very small part of the carload.

(Mr. Johnson, do you remember the statistics of your road, as to the percentage of the L. C. L. movement?

A. Yes, I remember it for one month, October, 1907, which I consider a fairly representative month, of the total movement, and it is 4½%, but I do not know that it is an exact apportionment between carload and less than carload.)

Q. Mr. Swaim, assuming that the L. C. L. movement is approximately 4½% of the total movement of the state, I will ask you if you could make any estimate of what proportion of that 4½% bagging and ties movement would be?

A. I have a report here for the Iron Mountain, for the years of 1908 and 1909, and for the Cotton Belt for the same years; these are percentages that I am dealing here in; the heading for 1908 report for the Iron Mountain is State of Arkansas estimated; 1909, is Arkansas intra-state; the Cotton Belt 1908 heading reads "Arkansas interstate and intra-state" and the same heading for the year 1909; now, the merchandise——

Mr. MOORE:

Q. What are you reading from?

A. I am reading from memoranda I made from the reports.

Q. Where did you get those headings you read?

A. They were taken from the headings as made in the report, quoted; we have those reports; I didn't bring them over, but they are accessible; I just took off the percentage because we could

2021 deal with anything but percentages; the merchandise part of this traffic for the Iron Mountain is 17 per cent for one year, and the other year is 16 per cent.

Q. What are you speaking of now, the percentage of what?

A. The percentage of the total traffic, which is assigned to merchandise shipments.

Examination resumed by Mr. HILL:

Q. That is both state and interstate?

A. Yes, sir.

Q. Do you think that same proportion would hold good as to intrastate business?

A. It shows here on the Iron Mountain—it says "State of Arkansas;" it does not say intra-state; the next year it says "intrastate;" one year is 16 and the other, it is 16.19.

Q. Take it that the merchandise is about 17% of the entire traffic, and that is not divided into carloads and L. C. L.

A. No, sir, that includes both.

Q. Would there be any difference, in your opinion, as to the movement carload and L. C. L., as to this particular item of bagging and ties?

A. I do not understand that question.

Q. Would the same proportion hold good as to carload and L. C. L. movement of bagging and ties, or would it be different?

A. I think it would hold good.

Q. We have then, an estimate that all mercandise is 17% of the total traffic, and that proportion would hold good in carloads and L. C. L., and that reduces your estimate to this, that the L. C. L. movement is 4½ per cent of the whole, and of that 4½%, 17 per cent is merchandise, is that right?

2022

A. Yes.

Q. Now, what percentage of the merchandise would bagging and ties be?

A. I was going to get it down just as far as I could, and then guess at it; it is not appreciable, but it is some small fraction of the 4½% of the 17% ; it is too small to equal any percentage at all.

Q. At any rate this movement, from the data you have and your knowledge, is very insignificant, comparatively speaking.

A. Yes, sir.

Q. Take your next, cotton seed, cotton seed meal, and cotton hulls; there seems to have been a change in that of 26%; that is L. C. L. movement; what is the extent of that?

A. That would be included under the head of products of agriculture, and that runs from about 12% up to 17%, and of course, that includes such items as grain, flour, hay, cotton and other products, and necessarily, this would be a very insignificant movement.

Q. Wooden cross arms is the next change I find; there is a change of 49% on that, another L. C. L.

A. That would be very little; there is some little movement but it is very small.

2023

Q. They have coined a word in this hearing—"a negligible quantity," would that describe that?

Mr. MOORE: I think you had better educate him a little, you and I haven't been able to comprehend it fully yet.

Q. How about infinitesimal; this would rather come in the classification of infinitesimal?

A. Yes, sir.

Q. The next item is fire brick; change in carload rate of 28%, and change in L. C. L. rate of 29%; state what you know, if anything, about the extent of the movement of that?

A. I don't have any special knowledge about the extent of any of these movements, but I am sure, from my general experience, that it could not be much; it is not used much; shipments are very light.

Q. That is usually a few stray cars here and there?

A. Yes, sir, it moves sometime in L. C. L., where a man wants to build a chimney back, or something like that; I guess they keep it in small quantities in little towns.

Q. There are a few occasional movements?
A. Yes, sir.
Q. The next item is wagons, farm and logging?
A. Yes, sir.
Q. There is a change on the carload rate, of 30%, and L. C. L. rate of 25%?
2024 A. We have here in the Cotton Belt report for 1908, under this head, including wagons, carriages, tools, etc., they make a report here that it is .92 of 1%.
Q. Of the whole movement?
A. Yes, sir
Q. What is included in that?
A. Wagons, carriages, tools, etc.
Q. That is, farm wagons, and farm and log wagons, would be only a small proportion of that classification?
A. I don't think it would include any large part of it.
Q. The whole business is less than 1%?
A. Yes, sir, about .9 of 1%.
Q. The next rate change is cider, ginger ale, and pop soda, and mineral springs water; that seems to have been changed to class "C"?
A. Commodity rate.
Q. What was the effect of that change?
A. Of course, there is a right smart movement of that, but that case goods, I think, moves largely by express; cider in barrels, there would not be much of that.
Q. You don't give any percentage on that?
A. No, sir, and I don't see anything here on that.
Q. In this total, you don't give the percentage of change of that rate?
A. No, sir; that was changed from class "D" to commodity rate; I will complete that.
Q. You think most of that stuff moves by express?
A. Yes, sir, that case goods, I am satisfied, it does.
2025 Q. Here is a matter that don't seem to be a rate, but it is changed; agricultural implements, stop allowed in transit for $5. charge?
A. Yes, sir, we followed an interstate arrangement; it does not change the revenue but gives the shipper better advantages, so he can ship a car to two or three destinations, instead of one.
Q. And they put a charge on that of $5. to the Railroad Company, to cover that privilege?
A. Yes, sir.
Q. The next item I see is plow points?
A. That is what that item is, plow parts, or points, etc.
Q. Is that L. C. L.?
A. Yes, sir.
Q. There is a change of 13% in that? Do you think that change would be of any moment?
A. No, sir; there is nothing here in these items, even a small item,

that would even include that; the nearest to it is bar and sheet metal, and they don't divide that—done far enough.

Q. Would it come under agricultural implements?

A. It may be included there; that is .92 of 1%.

Q. This would be necessarily an extremely small part of that?

A. Yes, sir, this is just plow irons.

Q. The next seems to be canned goods, L. C. L., construes pickles to include catsup, and horse radish.

A. Those are the only items affected by the reduction.

Q. That was a change in the classification, was it not?

2026 A. It was adding some other items to the canned goods mixtures, putting those items in commodity rating; it was more of an interpretation, whether they were all included under the word "pickles"; there was a question came up about it, and the Commission included it, to settle that; I think there had been some question about it before that.

Q. That was more of a ruling than a change of rates?

A. Yes, sir.

Q. Portable houses, seems to be the next; that was changed to lumber rate, plus 3 cents?

A. Yes, sir; I thought there would be so little of that, I didn't figure it at all; I know there came a demand for the rate; there must have been some movement.

Q. This was knocked-down houses?

A. Yes, sir, houses built at the mills.

Q. The rate was made just for some occasional movement?

A. Yes, sir, camping outfits or something like that.

Q. Hay is the next, may be shipped with flour or grain at the highest rate of any items; not a reduction, but provides for larger mixture.

A. Yes, sir, hay and flour rates were about the same, but they could not be shipped together, and the effect of that was to allow them to be mixed together; of course, it gave a rating on less carload, carload rating on less carload shipments, by making these two items the same; it was of some advantage to the shipper, of course.

Q. That was L. C. L. movement?

A. No, sir, carload; L. C. L. would not have been any dif-

2027 ferent because the rates were about the same.

Q. This amounts to waiving two separate minimums and allowing the car to be loaded, part with flour and part with hay?

A. Yes, sir.

Q. The next I find here is rule in return shipments; I wish you would just explain that?

A. That is just an interpretation of the rule; there is no change there; both sides agreed to that.

Q. Here seems to be another bagging and ties?

A. In the former instance, it was reduced to 2½ times the carload rate, and there it was reduced from 2½ times, down to 1½ times.

Q. That involved a reduction of 40%?

A. Yes, sir.

Q. You have already explained what you know about the extent of that movement?

A. Yes, sir, it is L. C. L. again.

Q. The next is sugar rate?

A. That is a change in the maximum rate from 15 to 13 cents; that did not affect distances not greater than 250 miles; it is change in carload rates for long distances, and did not affect short distances.

Q. There is practically no movement in that, from 250 to 300 miles?

A. No, sir; I don't think there was; it was made to cover some movement anticipated, but I doub't if the shipments in view were ever made.

2028 Q. You could pretty safely say that the state movements of from 250 miles to 300 miles belong to this negligible quantity?

A. I believe so.

Q. The next is mince meat, in carloads; that seems to be reduced 41%, what do you think about the carload movement of mince meat?

A. The provision there was to allow mixing of mince meat into carloads of canned goods; of course, some shipping was done under it, but it seems another one of that kind of quantity.

Q. It was just a rule, permitting cars to be loaded——

A. Permitting mince meat to be loaded with other kinds of canned goods, already mixed.

Q. That is a change on the L. C. L. rate?

A. Of course, that was changed from class rate to L. C. L. canned goods rate.

Q. Is that a movement of any extent?

A. No, sir; of course my idea about a good many of these things is no better than or not as good as some of the business men would be: I am just testifying about my idea of it.

Q. You have been in close touch with shipping interests of the state for the last six or eight years?

A. Yes, sir, for ten years.

Q. Here is a three mile rate, I wish you would explain that?

A. That was a rate of 1¢ per hundred pounds, maximum charge of $5. per car, made to cover shipments not included under

2029 switching rules, and where the distance was not greater than three miles; before that ruling was made, the 5 mile rate per hundred pounds ran to 2, 3, and 4 cents a mile, and the minimum was about 30,000 pounds; it did not include very many shipments, because the switching rate is less than that.

Q. This would apply where the switching rate did not extent three miles and where the movement was three miles and under five?

A. Yes, sir.

Q. That was to make a rate for three mile movement?

A. Yes, sir, it was five mile minimum movement before.

Q. The next item I find is concrete building material, carload

lots, change of 66%; have you any data to give an approximation of the extent of that movement?

A. No, sir, I have not; it shows here, stone and sand and other like articles; the only percent I found was that which included stone and sand movement, for one year, which was .8 of 1%; for the other year, it was just 1% of the total traffic; of course, that is an inappreciable part of that movement.

Q. Concrete building would be an inappreciable part of that classification?

A. Yes, sir.

Q. It altogether amounts to about 1%?

A. Yes, sir.

Q. Vinegar and cidar seems to be the next change, added to the vegetable mixture?

A. Of course, that permitted sometimes the movement of
2030 a barrel of vinegar or a barrel of cider along at a little cheaper rate, but in the very nature of the commodity, it could not have been changed much.

Q. The next item is machinery to be repaired, and there is a change of 35% on that; do you know anything of the frequency of that movement?

A. No, sir, of course, that is where machinery is to be shipped in for repairs, and for a long time, it was covered by special rates, but it got so after awhile, that they were more careful about special rates, and it made a demand for this rate, and it was put it; I don't believe there was a great amount of it; there was some shipping under it.

Q. Have you any data before you, by which the railroads have kept any memorandum of the extent of the movement of that kind?

A. No, sir; they put everything under the head of machinery and the movement under that head was .61 of 1% of the Cotton Belt, in 1908, and .59 of 1% in 1909. I don't know whether that would include that tonnage or not; you will see how small is the percent of the whole class it comprises.

2031 Q. The next movement I see is L. C. L. on machinery. What is that?

A. That was the third-class rating put in on saw-mills, put in by the railroads and approved by the commissions. It reduced the rate from first-class to third-class.

Q. So that was a voluntary change?

A. Yes. It was just merely approved by the commission.

Q. And there was no action taken by the commission making that change?

A. No, sir.

Q. Other than their approval of the railroads in doing so voluntarily?

A. Yes, sir.

Q. Millet seed per car-load and millet seed L. C. L. seems to have been the next change.

A. That is a change that was effected on millet seed and that like.

It amounted to a considerable reduction, though I don't think the movement was much; that is, there was not much movement of it.

Q. The next is iron grates. Were there any movements to any extent under that?

A. That had special reference to heavy grates and they were only shipped to saw-mills out in the country and other industries etc.

Q. There is alfalfa, broom-corn, clover, etc. per carload lots and L. C. L. on which the rate seems to have been changed. Have you any idea od that?

A. No, sir. I know it couldn't be much. I don't think we
2032 have much to do with them.

Q. The next is wire nails, wire fencing and some other things there. What do you know in connection with that?

A. Yes, there is considerable change. That is one of the changes that was made on account of the interstate mixture; that was enlarged on account of the interstate mixture. There is nothing here that gives us a fair idea of the amount of the traffic, barring sheet metal, here, take iron and steel rails. Barring sheet metal the whole group was less than one per cent of the traffic for either year.

Q. Is there not a separate head for wire nails?

A. Yes, sir.

Q. But in that grouping made by the railroads does any car bill separately?

A. No, sir.

Q. That is made along with the merchandise?

A. Well, there is no idea you could have to form an opinion of that with advantage. That didn't change the rates on the common articles that generally move under the iron rates.

Q. Now, you refer to conforming to the interstate mixture. What do you mean by that?

A. Well, we have the interstate group of articles with the metal rates, and whenever it is enlarged generally, whether with or without sufficient reason, you generally have reason to conform to it.

2033 Q. So as to make the state mixture the same as interstate?

A. Yes, sir.

Q. Now, here is saw-dust added to cord-wood rate.

A. Well, somebody had a shipment of saw-dust they wanted to ship, and would ship if they could get cord-wood rate. I don't know the origin of it.

Q. The saw-dust movement is not very heavy in this state?

A. No, sir.

Q. Here is rice products, and rice hulls, added to corn mixture, what do you know of that?

A. I don't know, Judge Hill, I don't believe it has been changed; I never have seen any of it in the markets; I guess it could have been.

Q. There is not but one rice mill in the state, is there?

A. Yes, three or four, but they are not shipping much.

Q. Now, the next is wheel-barrows carload, 16% change.

A. I doubt if that rate was ever effective for more than five cars; it was effective at Ft. Smith, and one at Hartman.

Q. Here is sawed and bent shapes for agricultural implements, change of 23½% on that rate per carload, do you know anything of the extent of that, why it was made?

A. No, sir, I know less about that than of the others, but I don't think it is much.

Q. The next rate is clariforce and Mexiota?

A. That was made to include some new brands.

Q. Adding some new brands to an already existing similar
2034 class, I presume?

A. Yes, sir, they were not provided for, and they didn't have any rate, so they made one.

Q. The next is the minimum charge, the rule was changed, what was that change?

A. The minimum charge is, of course, the minimum amount for which a shipment can be shipped; before that rule was made it was 25 cents for each line that participated in the haul; after that rule was made, it was 25 cents for one line, 40 cents for 2 lines and 60 cents for three lines, just a slight reduction. A good many shipments move but not many joint shipments; for a single line, it was not changed at all.

Q. This was just making application of that rule for the joint line movement?

A. Yes, sir, but reducing the minimum, where there was more than one line participating.

Q. Would that apply to the Cotton Belt Road?

A. There is no way to get at that.

Q. Well it is already in the evidence that that movement is a negligible quantity. Handles—car loads deduction of 2¢. Do you know anything of that?

A. Scarcely anything of that.

Q. The next change is Dowell-pins goven on the lumber rates plus 5¢. Do you know what a Dowell-pin is?

A. I have found out today.

Q. Tell us?

A. It is a pin used to fasten different parts of the barrel
2035 tops together. They fit in the holes and fasten them together. I reckon there must have been some movement or the rate wouldn't have been put in, but I can't conceive of a car load.

Q. The next is mining cars added to farm wagon rates. What do you know of that?

A. I don't know there couldn't be any shipment except in the western part of the State.

Q. Well that is just adding mining cars to farm wagon rates?

A. Yes, sir.

Q. The next change is plow handles—shallack?

A. Yes, we didn't make any difference in the rate. The shippers would quarrel with the agents, some would apply the rating and some wouldn't, and they just made the rule so the agents would all give the rate.

Q. Now the next movement is, I believe, of more importance; coal and coke and slack movement—there seems to have been a change of about 6%—no 11%—no 6% is right. I wish you would explain that coal rate?

A. The principal change in the coal was in November 1906, They changed the single line rates for two or three distances only, and they were not negligible distances. They were distances that made some differences in the rates, so the percent that is figured there is no more than fair.

Q. About 6%?

A. That is, on the coal itself, 6%. But on the slack it is 11%. Now that is the change in the single line rates, and at the same time the commission adopted a rule to cover railroads who applied
2036 single mile mileage in their rule. I figured the result of that for a distance of 200 and 250 miles, the distance I thought it ought to be figured to give the rule effect, and on coal it was 12, 10, and 8. For slack it was 10, 15, and 11 per cent.

Q. Was not that coal rate made on conference between railroads and shippers and practically agreed upon by all parties?

A. No, sir, there were a good many diverse interests, I think appeared in the hearing of it, but I think you cannot quite say that on the face of it any railroad advocated the change. Some of them didn't enforce it after it was made.

Q. I believe as a matter of fact some wanted it and some didn't?

A. I think if you go behind the record that is the opinion; that it had something to do with the action of the commission at the time.

Mr. KIRBY:

—. Did you go behind it to see?

A. No, but the railroad Company, as they generally do, stuck together.

Mr. HILL:

Q. Does that cover materially changes, you have explained?

A. Yes, sir.

Q. Now the oil car load rates, and the oil L. C. L. was changed. I believe that was one of the largest changes made?

A. Yes, that was changed back and forth, and the final change since they first adopted has amounted to about one half per-
2037 cent.

Q. Now have you any data from which to ascertain the state of the oil movement?

A. Only from the Cotton Belt report for the last two years. One year it was .93 of 1% and the other year 1.93 of 1%.

Q. Since you have been connected with the commission, what is the change that has affected the rates so far as you know. I mean the revenue appropriations?

A. I have not thought about that question at all.

Q. Now on excelsior is the next change. I see here a change of 19%. That seems to be a change only in certain distances in the excelsior rate?

A. Yes, sir, that is not a negligible quantity though, because it

was made in reference to a movement that it was thought that it would produce. I don't know whether it ever did or not. There was just one plant and if it did it couldn't have been more than a car load of it ever moved at all.

Q. The next change seems to be certain articles added to the iron list; angle-bars, hoops, and various other items that were added to the iron list. You have it all marked here on account of interstate mixture. Explain that?

A. It was another one of those same instances where they just made the commission tariff conform to the interstate tariff on the the same goods.

Q. Now the next change is on rough rice. I don't know whether it is changed or not. I believe it is a new rate, is it not?

2038 A. Yes, sir, made on account of the movement of rice from the mills. I think Rock Island expected the most movement over their road. I think the Cotton Belt have about the same rate. That is reduced from the commercial rice rate.

Q. That was made just to meet a new industry that has just recently sprung up?

A. Yes, sir.

Q. Did you have that rough material rate?

A. No, sir, the best that was in effect under the Commission's tariff was the same as the Iron Mountain tariff. The Cotton Belt rate was made, in some instances, higher, but the Commission never did consider that change at all.

Q. You did not find any record of it?

A. No, sir; it just came up this way. The Iron Mountain had been for a long time protecting the rough rice rate with a special tariff they published themselves, and the- neglected to withdraw that tariff. That is how the issue was made between the Commission and the railroads and when the other railroads joined it made considerable splash, but the Commission never made any rate at all.

Q. That was to enforce the Iron Mountain Railroad?

A. Yes, sir.

Q. Well, now, these changes and additions that you have gone over comprise all actions of the Railroad Commission from

2039 July, 1903, to September, 1908, so far as the intra-state rates are concerned?

A. I think they are. I went carefully over it and made a note, and copied it as I have the ability to do it.

Q. You have gone over this carefully and made it up the best you could?

A. Yes, sir.

Q. What difference, if any, was there between Standard Distance Tariff #2 and Standard Distance Tariff #3? I don't want you to go into detail, but state generally what difference there was.

A. Tariff #3 was not issued to embody any new rates at all.

Q. It just embraces the amendments up to the date of its issue?

A. Yes, sir.

Q. And are these the amendments you have referred to in your testimony here?

A. Yes, sir.

Q. And are all that were included up to the time of the issue of Tariff #3?

A. Yes, sir.

Cross examination.

By Mr. MOORE:

Q. Mr. Swaim, in what business were you engaged before you became connected with the Railroad Commission?

A. I was in the railroad freight offices.

2040 Q. Where?

A. I came immediately from Mr. Bragg's office—the Freight Bureau—to the Commission. Prior to that I was with the Cotton Belt a few months; and I went to the Iron Mountain Division Freight office in 1898. I was there about five years.

Q. You were never engaged in business on your own account were you?

A. Not very much.

Q. What opportunities have you enjoyed of knowing the movements of the different kinds of commodities and classes of freight throughout this state?

A. No more than I would glean in this business that I have just referred to.

Q. Well, to what extent would that give you the opportunity of informing yourself on that subject?

A. Well, I don't think the opportunity is excessive. I am not as well qualified to answer some of the questions I have attempted to answer as a merchant would be who was directly in the business, but I have an idea.

Q. For instance, you never have been engaged in the mill business?

A. No, sir.

Q. On what basis do you estimate your means of knowing?

A. Just the conception I have of it and what I have heard.

Q. Well, you would have about the same conception if you lived in St. Louis, would you not?

2041 A. Well, I believe I would have a little better.

Q. What additional means of knowing these things have you in living here from a man living in Memphis?

A. Well, just living here.

Q. Have you paid any particular attention to the movement of mill products?

A. No, sir, not any more than my general observation.

Q. Now, I have lived here a good many years, probably, more than you. I hardly think I could. Now, what particular advantages have you over me?

A. Not much. There might be a little bit, but not much. You might testify as well as I.

Q. Your testimony then is somewhat of a guess?

A. Yes, sir, somewhat.

Q. Have you ever been a farmer?

A. Not since I was a boy.

Q. What is your source of information as to the movement of plow handles in this state?

A. Well, I worked in a store as a boy and around plows, and this business I have worked in for the last 12 years is all the basis I have for the guess.

Q. Is it not a fact that it is very largely a guess, to use the word you used just now?

A. A good deal of a guess. I answered just as I would have answered any question.

Q. How many commodities and classes of freight do the changes to which you testified affect,—the changes that were made
2042 by the Commission?

A. How many?

Q. Yes.

A. I would have to count them.

Q. Well, I wish you would count them.

Mr. HILL:

Q. Did you ask the total changes or just the number of changes on rates?

Mr. MOORE:

Q. The total number of changes affecting rates. Have you finished counting them?

A. Yes, sir; according to the best addition I can give. I have counted some things as changes where they are just rules. There are 75.

Q. Between what periods of time were those changes made?

A. Well, the last was made in April, 1908, and the first in June, 1904.

Q. How many of those changes produced increases in rates?

A. I don't believe any of them increased it. I don't see any increases.

Q. So all the changes made during that period resulted in diminishing the rates, did they?

A. Yes, sir.

Q. You have testified, in fact, as to a great many of the articles that are made the subject of changes, that the movement is very small. What is the object of the Commission in changing the rates affecting movements of so little importance as your testimony shows them to be?

2043 A. A great many times a very small matter will bring up a demand for a change in a rate or some particular item. May be it is a movement between two points, and the policy of the commission is to only change a rate that will embrace an article in the joint distance tariff. And I think the most of these changes were just in answer to a demand for some movement intrastate.

Q. A demand from whom?

A. From shippers. Most of these, fairly all of them, were made on the demand of shippers.

Q. How many demands were made for changes during that four years' period covered by your exhibit?

A. Why, in just practically all cases. I don't know of the Commission ever making a change only upon complaint.

Q. Exhibit "B" then covers practically all demands for changes during that period?

A. I thought you meant how many demands as to those changes. No, there were other demands that were not granted.

Q. How many?

A. I don't know, but we have some data compiled on that.

Q. Well, state approximately,—if you have it.

A. I wouldn't like to guess at it, because in a little while I could go and get many of the instances, a considerable number.

Q. Well, I want to call your attention to an item. For instance, take saw-dust. How came that change to be made?

2044 A. A man had some saw-dust and had an opportunity to sell it at some certain point. There was a class rate—I forget the particular instance—but there was never any movement before that and a class rate applied. The reason for the absence of the rate was there never had been any movement. And as soon as he applied for the cord-wood rate—He said it would be used as cord-wood would be used, to burn—But of course the cord-wood rate was prohibitive. There was no rate because there was no movement and the rate was made.

Q. I believe you testified as to the change of the rate on sugar. I believe you said that affected a haul of 250 miles?

A. Yes, about that.

Q. What did you say as to the extent of the movement of sugar on hauls of that length in this state?

A. I said I didn't think there had been very much of it.

Q. On whose application was that change made? At whose instance was that change made?

A. I can't tell you the name of the party.

Q. Will your records show?

A. I think they will.

Q. Well, I want you to look that up. Now, what was the object of the commission making that change?

A. Well, their object was to reduce that maximum rate to 13 cents. They thought it ought not to be higher than that.

Q. Why was it necessary to reduce that maximum rate?

2045 A. My recollection is it was thought it would affect the movement from Helena to Little Rock or to Texarkana and they thought the state rate was too high.

Q. Was the movement from Helena to Little Rock embraced in that? Is that the distance?

A. Yes, sir.

Q. 305 miles?

A. Well, that couldn't affect that.

Q. Yes, but you misunderstood me. You say it is 305 miles from Helena to Little Rock?

A. Yes, by that road.

Q. By what road?

A. By the Iron Mountain .

Q. How much sugar is sold and distributed from Helena and Little Rock in the course of a year?

A. Why, I don't reckon there is any.

Q. How much is there shipped from Helena, originating at Helena, to the distance of Little Rock in the course of a year?

A. There would be very little of that.

Q. Well, would there be any? Do any of the Little Rock merchants buy sugar at Helena?

A. No, sir.

Q. There is no movement any way then between Helena and Little Rock?

A. No, sir.

Q. Well, then, that illustration doesn't apply, does it?

A. No, I said Helena to Texarkana.

2046 Q. Do the Texarkana merchants purchase sugar at Helena?

A. I don't know. That is the rate.

Q. Now, don't you know, as a matter of fact, that there is no interchange in the way of buying and selling between Helena, Little Rock and Texarkana, or any jobbing point of Arkansas,—between them and Helena?

A. Yes, I think that was why it was made.

Q. You think then that rate was put in for the purpose of promoting the jobbing interests of Helena by creating a market at other jobbing points in Arkansas, by which the merchants at other jobbing points in Arkansas would buy from Helena. Is that the object of it?

A. No, sir. They stated they wanted to ship sugar from Helena to Texarkana.

Q. Who stated that?

A. Whoever it was. I forget.

Q. Where did that sugar come from they wanted to ship?

A. I guess from where it all comes from.

Q. Where?

A. From Louisiana.

Q. Wasn't that rate made for the purpose of influencing the interstate rate on sugar?

A. No, sir.

Q. You say it was not made for that purpose?

A. No, sir. I can't answer that question any other way.

Q. Now, what was the object, assuming there was no trade between Helena and any other jobbing point, you have referred to Little Rock, Texarkana and other points—assuming there

2047 was no trade between those points and Helena was not an originative point for the purchase of sugar by the merchants of this state, what could have been the object?

A. I would say this, to promote trade between these two points. You can't go clear back, Colonel. Of course sugar that comes from Helena comes from somewhere else. They don't raise any at

Helena. Nearly all the sugar marketed in Arkansas comes from Louisiana.

Q. Was that application made by the people of Helena or Texarkana?

A. I can't remember. I remember the circumstances.

Q. Can you remember whether the application for that reduction was made by the merchants and shippers of Helena for the purpose of building up a jobbing trade from that point?

A. I don't think it was. I think it was Texarkana interests.

Q. Don't you know the Texarkana interests, either before or after that order was made, purchase their sugar at Helena?

A. I don't know what the effect was.

Q. Speaking on the same basis, speaking from your impressions, as you have testified very largely in regard to other matters since you went on the stand this morning, from your general knowledge and views as a citizen of the state, what would be your opinion about that, as to whether there has been any trade between Helena
2048 and Texarkana in sugar, either before or after that order?

A. I don't think there is. I doubt it. I might miss it a little on that, but I doubt it.

Q. Now, I will ask you if it is not known to the members of the Commission and to yourself and to those that are familiar with traffic arrangements that that cut in the rate on sugar would affect the interstate rates under the rule that prevails, when the interstate rate is made up of a combination of locals: that is, local rates?

A. I would answer for myself. I wouldn't answer for the impression the Commission has acted under.

Q. Well, just answer from the common knowledge of everybody connected with that subject.

A. I am satisfied that they knew what the interstate rate was New Orleans to Texarkana and what it was from New Orleans to Helena.

Q. But, is it not true that, in a general way, the interstate rate was made up of a combination of locals—local rates, and to that extent influenced by the local intrastate rates?

A. It might in that instance. I forget just the details.

Q. I am not asking you for details. I am asking if the general rule applied to interstate rates, whether they were not as a rule made upon a basis of a combination of local rates within the states.

A. They look like it sometimes, but I don't think that is the basis for making the interstate rates.

2049 Q. Well, wouldn't that necessarily be the maximum rate?

A. Oh yes, it would be the maximum rate.

Q. During your long connection with the State Commission you have endeavored, have you not, to familiarize yourself with the rulings of the Interstate Commerce Commission in so far as they may affect state rates? Have you not?

A. Yes, sir.

Q. Well, you are aware, are you not, that the Interstate Commerce Commission have adopted a rule by which the through rate

should not exceed the sum of the local rates of freight hauled, but retain its prima facie reasonable rates?

A. Yes, it amounts to that.

Q. Now, in view of that rule of action governing the Interstate Commerce Commission, is it not a fact that the local rates do affect the interstate rates?

A. Why, yes, they do.

Q. Then we have a case now in which an interstate rate applies upon sugar for a distance this sugar does not move in the state. There is no traffic in it covering this distance. And there is a material reduction made in it. All the trade at that time was between other points and was constituted of interstate shipments. Now, in view of these facts, I want you to state if that was not made for the purpose, obviously, of affecting the interstate rates, and if that was not the purpose of the man who made the application for the change?

2050 A. I think it was made to get a cheaper rate. I don't think the Commission made the rate in order to influence interstate rates, but the application was made to get a cheaper rate on sugar.

Q. I believe you said that application came from Texarkana.

A. I said I thought it did.

Q. And the object of making the application was to get a cheaper rate on sugar?

A. Yes, I think so.

Q. And the merchants down there purchase their sugar from New Orleans and Mobile; that is, Louisiana points?

A. Yes, I think so.

Q. What is the extent of that change? What is the amount of the change? What was the rate before?

A. 15 cents.

Q. And reduced to 13. What is the rate between New Orleans and Helena?

A. I have forgotten. I didn't take any record of the interstate rates at all and it has been several years ago and I don't remember anything except the change that was made on the state rate.

Q. Well, at that same hearing, wasn't the railroads represented at the time that change was made?

A. Yes, I think so. Oh yes, I know they were.

Q. Didn't the railroads furnish the commission with information as to the rates from New Orleans and other points from which

2051 the merchants who were making the application obtained their sugar?

A. Yes, I am sure they did.

Q. Well, if they did and the rate from Helena to Memphis was 10 cents and the rate from Memphis to Texarkana was 13 cents, they had that information, didn't they?

A. Yes, I said so a while ago.

Q. And they were also informed of the through rate from New Orleans to Texarkana?

A. Undoubtedly.

Q. Do you know what that was?

A. No, sir.

Q. While ago you said that the distance from Helena to Little Rock was about 320 miles. I will get you to take this time-card here and see if it is not 160.

A. I said Texarkana.

Q. You didn't mean to say it was 320 miles from Texarkana to Little Rock?

A. No, sir, it is 160 to Little Rock.

Q. Now, is there any intrastate shipment that covers a distance of 250 miles of sugar in the State of Arkansas?

A. Why, yes, if the shipment moved from Helena to Texarkana it would apply to that.

Q. Well, do intrastate shipments move from Helena to Texarkana?

A. I don't know. I might guess.

Q. I am not asking you to guess. I would prefer facts.

2052 A. I wouldn't think they did, but I wouldn't have any reason to say they didn't. I doubt whether they would or not under ordinary conditions, but they might.

Q. Any other shipments?

A. Let's see. Shipments from Texarkana to the north end of the Iron Mountain. What is that town? Moark. Of course that would.

Q. That is to say, from Texarkana to Moark. Now, is there any shipment of sugar made from Texarkana to Moark?

A. No, sir, not that I know of.

Q. What is your object in making that statement then?

A. I thought you wanted to get at the distance.

Q. Well, that doesn't have any bearing on this proposition. The effect of this then was to reduce interstate rates from Louisiana points to Texarkana. Now, what effect would it have on the rates from Louisiana points to Fort Smith?

A. I didn't say that.

Q. You didn't say what?

A. That the effect was to reduce the interstate rate. It might have been reduced but I don't think that was the effect.

Q. Well, give us your best judgment?

A. I think the interstate rates bear some relation, in some way affect state rates, but I don't think it is as much as is lots of times asserted.

Q. Well, give us your best judgment as to the effect that a reduction of the rate on sugar in this state, that you have shown
2053 as an exhibit, had on the interstate rates from so many Louisiana points to points in this state?

A. Do you mean my judgment of what would be the effect of reducing that rate two cents?

Q. Yes.

A. Well, if the interstate rate were so adjusted that it reduced the through rate it would eventually reduce others. No question about that. Whether it did I can't say.

Q. And if it did that it would do so?

A. Generally. But how much it would take to do that I can't say. Of course, it would reduce it sufficiently after a while.

Q. What was the change in the hay?

A. The hay rate was not appreciably reduced. It was just simply an action there allowing them to ship hay and flour together. Prior to that time the rate on either commodity was about the same, but they couldn't be mixed. And in that way you could ship less than carload shipments.

Q. You mean it could be shipped in the same car in carload movements?

A. Yes, sir.

Q. Why?

A. Because the classification would permit the mixing of them.

Q. What are applied to hay and what to flour—commodity
2054 or class rates?

A. Commodity on both of them prior to that time.

Q. You said a moment ago there was no appreciable change made in the rate on hay. What change was made?

A. Just simply to allow it to load mixed. It was shipped out at the same rates, but in smaller quantities. Before you would have to have had a carload of each. Under the latter you applied the L. C. L.

Q. Don't you know the result of that rule was to force the railroads to carry hay in less than carload lots at carload rates?

A. Yes, sir.

Q. Now, what is the difference between carloads and less than carload lots on hay?

A. Well, there is a considerable difference.

Q. Just state in figures what the difference was. Give each rate. The rate on carloads and less than carloads on hay.

A. Well, it was this way——

Q. Well, answer my question.

A. Can I make this other statement——

Q. Well, answer my question and then do so.

A. Well, what I wanted to say was—for fear I had overlooked that—If they had not made the change they would have continued to ship each commodity in carloads. Sometimes it might have been inconvenient to ship, but they would have continued to ship each in carloads.

2055 Q. Now, I understand that. You mean to say that when they shipped a car load of hay they charged carload rates and when they shipped a carload of flour they charged the carload rate applicable to flour,——

A. Yes, sir.

Q. But, under this rule, if they put the two into one car, that, under the carload movement, they had to apply to that the carload rate?

A. Yes, sir.

Q. Now, give me the difference in the rates,——

A. But what I said further was that, for instance, if they had not made the rate both commodities would have moved in carloads and at the same rate as they did mixed. Now, you take 50 miles,——

Q. Just figure it out on the basis that you got your average in this exhibit you filed.

A. Well, take 25 miles,—the carload rate on flour is 6 and on hay it is 4; the L. C. L. rate for the same distance is 12 on flour and 10 on hay; 50 miles——

Q. I just want you to state the rate on hay in carload movements and on less than carload lots.

Mr. HILL:

Q. For what distance.

Mr. MOORE:

Q. Just the same as in that exhibit. I think he took four distances and made the average.

2056 Q. Are you acquainted with the location geographically of the different railroads of the State?

A. Yes, sir, in a very general way; I have been out over the State a great deal.

Q. Isn't it necessary for the Railroad Commission, of which I believe you are secretary, to become familiar with the location of the different roads?

A. The commissioners do travel a good deal.

Q. You acquired that information from the maps, I suppose, more than from travelling; do you know it from the maps of the roads?

A. Yes, sir, I think fairly well.

Q. Is there any line of road in this state that has, within the limits of the state, a continuous straight mileage of 300 miles?

A. Yes, sir.

Q. What road is that?

A. There was a distance over this line that we referred to, from Helena to Texarkana.

Q. What continuous line of road extends from Helena to Texarkana?

A. The Iron Mountain.

Q. In what way?

A. Around by Wynne and Little Rock.

Q. What is the most direct route from Helena to Texarkana?

2057 A. It is 305 miles.

Q. What is the most direct route, in view of the various railroads that are between the two places? I take it, it would be the Cotton Belt and Iron Mountain, wouldn't it?

A. Yes, sir; I don't know without figuring; it is not very much difference, I would not think, either way.

Q. What other road is there that has a continuous mileage in one direction of 300 miles?

A. It is nearly that far across the State from the Southwest to the northeast, on the Iron Mountain; that is 300 I believe, and a little more, and then it is 300 miles up to Fort Smith from Texarkana, and 300 miles from Fort Smith around to a good many points south.

Q. What is the distance of the Choctaw road across the state?

A. It is about 290 miles.

Q. Those are about the lines that would extend 300 miles?
A. Yes, sir.
Q. I believe you say this sugar rate is 13 cents on distances of 300 miles?
A. Yes, sir.
Q. In the ordinary course of transportation throughout the State, there is only a few lines on which there could be a continuous shipment for that length?
A. Only a few instances.
Q. Now, what would be the joint rate on two or more lines, under your tariff, on a shipment of ten or fifteen or twenty or
2058 twenty-five or forty or fifty miles of sugar, just look at your tariff and see?
You will find the rate on sugar there on page 9.
A. On two line rate?
Q. Yes, two line rate.
A. The differential is five cents on carloads.
Q. Now, turn to the other rates and see what it would be for those distances?
A. For 25 miles, the two line rate is 13 cents.
Q. What is it for 30—it is so on up to 50?
A. Yes, sir.
Q. What is it for ten ?
A. Ten miles is 13 cents.
Q. So the rate is the same on two or three lines, 300 miles; I mean on two lines, ten or fifteen miles up to 50, that it is the same as it is for 300, up to two or three lines?
A. On two lines, yes, sir. The maximum rate for two line shipments is the same; of course, three line shipments are different; on two line shipments, the maximum rate is 13, and the rate for ten miles is 13.
Q. You call that a distance tariff, don't you?
A. Yes, sir, that is the title of it, "Standard Distance Tariff."
Q. I believe you said there was a rule there, providing that agricultural implements, giving the right to the shipper to remove, make one stop and remove from the carload during the journey?
A. Partially unload, yes, sir.
Q. Tell me in a few words, just what that rule is?
A. For instance, you go to ship from here to Hope, a car-
2059 load of agricultural implements; that permits you to unload it,—say you can stop for instance, and unload part of it at Benton, and stop and unload a part at Malvern, and finish unloading at Hope; you get your carload rate.
Q. The railroads are required to charge a carload rate?
A. Yes, sir, to Hope.
Q. What is the difference between the carload rate of agricultural implements and less than carloads?
A. It all takes class rates; take that instance, for 120 miles, using for the basis class "A," and that is about the correct basis, 28 cents for that distance, and the L. C. L., it runs 1st, 2nd and 3rd class——
Q. What is the L. C. L. rate for the same distance?

A. From 40 to 53 cents for the same articles.

Q. That would be from 12 to 23 or 24 cents difference.

A. Yes, sir; there is this difference; if you ship it L. C. L., the L. C. L. rate to Benton, the first point would be from 19 to 24, and to Malvern, a distance of 50 miles, would be from 27 to 52; they wouldn't charge this Hope rate on an L. C. L. shipment in addition to that, but they would charge $5.00 for each stop.

Q. Suppose they stopped at Prescott?

A. The L. C. L. rate would be from 37 to 47, and the carload rate to Hope is 27.

Q. Now, Mr. Swaim, by enabling parties to carry, load and unload in less than carload lots, and applying the carload rate to it, isn't there a very material reduction in rates affected?

2060 A. I doubt it.

Q. Do you doubt that there is a material difference between 28 for instance,——

A. You mean on the movement?

Q. Yes, sir, doesn't it make a very material change in the rates?

A. It makes considerable change in the figures I read, yes, sir.

Q. And so far as loading, and unloading, and so forth is concerned, it is a less than carload movement?

A. Yes, sir.

Q. You spoke about mixtures, I want you to explain to me what you mean by mixtures; you said for instance, that they mixed mince pies or perhaps mince meat with canned goods; explain that to me?

A. The rate before that was done, provided for mixing of nearly all kinds of canned goods, and some other articles and when they enlarged the mixture, they just provided that mince meat should be shipped at the canned goods rate.

Q. What is the effect of that upon the rates?

A. That changed the rate from the class rate to the mixed commodity rate.

Q. Is there a material difference between the class rate and commodity rate?

A. Yes, sir.

Q. By doing that, every article to which a commodity rate is given, that you added to the mixture, that is withdrawn from

2061 class rate and put under commodity rates?

A. Not every one.

Q. Take the case—you may have mentioned a number, but I happened to remember the mince meat, which you said was added to canned goods?

A. Yes, sir.

Q. That had the effect of taking the mince meat out of the class rates and putting it in the commodity rates, where it was shipped in a car with canned goods?

A. Yes, sir.

Q. That illustration runs through all the cases that are affected by that rule?

A. Not all of them; most of them though.

Q. Give me one that was not?

A. The classification was changed on plows, etc.; it was not made a commodity rate, but the classification was changed and the rate reduced somewhat.

Q. Just tell me what the change was on plows?

A. Plows, plow points and so on, was reduced to third class, and formerly it took second class, and some of them third class, some first class.

Q. Did that make a considerable difference in the rates?

A. Yes, sir; you know I figured out the rate percentages.

Q. I know; we will get to that later; I just want you to tell me the difference between the two classes that you mentioned a moment ago.

A. It made a difference of 13% in that item.

Q. That is not what I am asking you; I am asking you the
2062 difference between the rate prescribed for second class and third class, and you said they were changed from second to third?

A. The difference is 13%

Q. As you stated it there?

A. According to the way I figured it.

Q. What is the difference on a haul of five miles?

A. Between the second and third is one cent.

Q. Ten miles?

A. It is 1 cent.

Q. Now, what is the rate on each class, second and third, you say there is 1 cents difference?

A. 15 and 14.

Q. 20 miles?

A. 19 and 17.

Q. 25?

A. 21 and 19.

Q. What is on 40?

A. 27 and 24.

Q. And for 75?

A. 37 and 32; the percentage don't vary very much for class rates.

Q. You stated that bagging and ties were reduced from fourth class to 250 per cent of the carload rate, and then it was reduced again to 150% of the carload rate; now, tell me what was the result of that reduction?

A. The 1st one was 39%; the next one was 40% more.

Q. What was the fourth class rate for, take some representative distance, say fifty miles?

A. The fourth class was 22, and it was changed from 22 to
2063 10½.

Q. Reduced less than one-half?

A. Reduced from 22 to 10½, yes, sir.

Q. Now, take at 100 miles.

A. It was reduced from 32 to 13½.

Q. What would be the rate on canned goods for the same distance?

A. Carload?
Q. 100 miles, yes, sir.
A. 14 cents.
Q. Were you giving me the carload or less than carload?
A. Carload, 14 cents.
Q. Did you give me the carload rate on bagging and ties?
A. No, sir, that was L. C. L., bagging and ties, 13½.
Q. Now, let me see if I understand you, you reduced bagging and ties first, to 250% of the fourth class rate, carload rate?
A. We reduced it from fourth class to 250% of the carload rate.
Q. Tell me what that reduction involved on 100 miles.
A. About 39%.
Q. Just tell me the difference in cents, per hundred weight.
A. For fifty miles?
Q. No, 100 miles.
A. The rate was 32; 250% would make 22½.
Q. And then you reduced it below that, about 150% of the carload rate?
A. Yes, sir.
Q. What would that be?
2064 A. 13½.
Q. You reduced it from 32 to 13½?
A. Yes, sir.
Q. You said awhile ago, from 22½ to 13½, that is what I wanted to get corrected.
A. There were two reductions.
Q. How did you reach—you stated the dimunition in rates that had been made by the Commission, during the period covered by your testimony in percentages, taking one item of per cent, how did you arrive at that?
A. No, sir——
Q. You averaged it and said it was an average of 20% for an illustration, how did you reach that average?
A. You mean on each single article?
Q. Give me your basis?
A. Here is the basis; I took the rates for 25, 50, 75, 100 and 200 miles, added them together and then took the difference from the sums; assuming there is an equal movement for the distances, of course that is the average reduction; of course that won't always be true.
Q. You took those five distances?
A. Yes, sir.
Q. Took the distances and then added them together and divided them by five?
A. No, sir, added them together and took the relation of the sums to each other.
Q. You have been making statements here frequently, of a percentage; you stated that just now, that is what I am asking
2065 about, how did you arrive at that?
A. Just as I stated there, but I took each item, and I figured the rates for those five distances under the old basis and

under the new basis, and then the relation of the sum of those rates to each other; for instance, bagging and ties, the old rates amounted to $1.69; they were reduced so that they amounted to $1.02; that is 61% or 39% less than the original.

Q. As I understand, you took the sum of all the rates for the five different distances mentioned a moment ago, added them together, you then took the sum of the rates after the reduction had been made in the sum given, and stated the per cent of decrease on the basis of the ratio between the total reduced rate and the original rate?

A. Yes, sir, that is true as to each commodity; I haven't made any attempt to see what the reduction was in percentages or in per cent on all commodities taken collectively at all.

Q. You assumed, of course, in doing that, that the movement would be uniform those different distances, didn't you?

A. That assumption is involved, yes, sir.

Q. Can you state that the facts would bear out that assumption?

A. No, sir, I am not expert enough to testify about that, but those are the ordinary distances and about all the figures that I would make, would be based upon that.

2066 Q. If the facts did not sustain the assumption, the result would not be correct would it?

A. No, sir.

Further cross-examination reserved.

Redirect examination.

By Mr. HILL:

Q. In testifying this morning as to your knowledge of these various movements, and the information you have gathered about that, I will ask you if it is not a fact that various shippers came to the commission with their complaints and to discuss rates with the Commission and that you have taken part in those discussions and learned of these various movements, from talking with the men who actually handled the movements?

A. Yes, sir, in the majority of cases I have had something to do with it in the conferences.

Q. You have gathered information about the various movements in the State in that way, haven't you?

A. Yes, sir, whatever I could.

Recross-examination.

By Mr. MOORE:

Q. In adding articles from time to time to these group rates,—that is what mixtures come under?

A. The mixture, of course, is a commodity group.

Q. In adding various articles to commodity groups, the mixtures you speak of, is the commission governed by any rule?

2067 What rule does it follow, if any?

A. They have not any strict rule; if a case comes up, and

some rule is suggested, for instance, the instance we had, the mince meat and canned goods rate, they found out it had been applied on interstate shipments.

Q. Who applied it on interstate shipments?

A. The interstate railroads.

Q. Did the Interstate Commerce Commission approve it on schedules filed with them? Did it become a regulation with the interstate Commerce Commission upon the filing of schedules?

The above question was at the time objected to by the defendants. Question withdrawn.

Q. Is it true, that the State Commission in regulating these commodity groups in intra-state traffic, usually followed the interstate practice?

A. Yes, sir, often enough. I think, to call that the rule; of course, if a case comes up and there is no precedent, they do not refuse to do anything about it because they cannot find a precedent.

Witness excused.

2068 J. E. HAMPTON, being first duly sworn and examined, deposed as follows:

Direct examination.

By Mr. HILL:

Q. Will you please state your name, residence and present position?

A. J. E. Hampton, Fordyce, Ark., I am Chairman of the State Tax Commission.

Q. Were you a member of the Arkansas Railroad Commission?

A. Yes, sir.

Q. During what period of time?

A. From January, 1903, until May 18, 1909.

Q. Did you serve as chairman of the Commission during that time?

A. Yes, sir, I did one year, 1907, I believe was the year.

Q. During the years that you were a member of the Railroad Commission, were you familiar with its work?

A. Yes, sir, I was in the office all the while.

Q. Did you attend all the meetings of the Railroad Commission during that period of time?

A. Yes, sir.

Q. Did the railroads, while you were a member of the Commission, any of them, ask you to raise any rates?

A. The Hot Springs Western did; as I remember, several of these short roads did.

Q. Did you do so?

A. Yes; we allowed them to change their local, which was an increase; that is, this was done after we put in joint rates;
2069 there was no request of that kind while we had single line rates.

Q. When was it you put in joint rates?

A. In the summer of 1903, July I believe.

Q. Did the Iron Mountain Railroad or Cotton Belt Railroad ever apply to the Commission while you were a member of it, for a readjustment of any of its rates or all of their rates?

A. No, they did not, and I do not remember now of any request of that kind at all.

Q. They did not file any complaints with you about the injustice of any particular rates or of the rates as a whole?

A. No.

Q. Did either of these roads, the Iron Mountain or Cotton Belt, make any application to the Commission while you were a member of it, for a restoration of the rates, in whole or part, which had been in force prior to the Commission putting in its Standard Distance Tariff?

A. They did not.

Q. Have there been any material changes in the tariff as a whole; by material changes, I mean changes that would materially affect the revenue of the railroad, comparing the changes with the whole revenue, since you have been a member of the Commission.

A. I think not.

Q. Are you familiar with the Commission rates that were put in before you became a member of the Commission?

A. I think not.

Q. Are you familiar with the Commission rates that were put in before you became a member of the Commission?

A. In regard to that other question, when you asked about
2070 the material change, you were not referring to the joint rates?

Q. I was referring to that, but probably we had better clear up that question about the joint rates? Your answer to the question a few moments ago, I understand you to be referring to the distance rates and not to the question of the joint rates?

A. Yes.

Q. I wish you would, in this connection, state the history of the making of the joint rates by the Commission?

A. The Legislature of 1903 gave us authority to make joint rates; previous to that, our predecessors had put in joint rates, but they were enjoined and the joint rates,—the injunction, was sustained, because it was shown that the Commission did not have power to put in joint rates up to that time; after the Legislature gave us authority, we took up the matter with the railroads in the spring, and we finally issued the joint tariffs in the summer of 1903.

Q. Was there any material change between that tariff as issued then, the joint tariff, and the tariff issued by your predecessors, other than the joint rates as issued by your predecessors had been rendered nugatory by an injunction?

A. I don't remember particularly that we put in the joint rates our predecessors had, but it was a revision from what the railroad was using at that time, because they were allowed then to use the sum of the locals.

2071 Q. When you put in the joint rates, upon what basis were they established?

A. Well, we had a hearing before the Commission and the railroad representatives were present, and from the best information we could get, in regard to the rates put in in other states, and from the railroad people present, we thought the joint rates should be about 80% of the sum of the locals, and in making the rate, we endeavored to put in such differential figures as would produce 80% of the sum of the locals.

Q. Instead of making joint rates 80% of the sum of the locals, you put a differential there which you considered would be equivalent to that?

A. Yes.

Q. Was there opposition to these joint rates, at the time they were put in?

A. There was no open opposition; I presume that the railroad preferred that the rates remain as they were, but they recognized the fact that we had the power to put in joint rates then, and didn't offer any open opposition to it.

Q. I am referring more particularly to the rates you established; if they had to have joint rates, did they object to the particular schedule which you put in?

A. Well, in regard to the sum of the locals, I asked Mr. Stith, who was at that time general freight agent of the Iron Mountain, what he thought the rate should be and he said he thought it should be 80% of the sum of the locals.

2072 Q. The rates put in were approximately what the railroads suggested themselves, were they not?

A. Yes.

Q. Did they oppose the differential basis or just went it straight 80% of the sum of the locals.

A. There was no strenuous opposition, but I think they preferred the sum of the locals.

Q. Why did you take the differential method of arriving at that, instead of 80% of the sum of the locals?

A. My idea was that the country merchants could understand how to estimate the rate better in that manner, than they could by the sum of the locals.

Q. That it was a simpler system?

A. Yes, sir.

Q. The revenue producing effect would be the same?

A. Yes, the revenue would be the same.

Q. Mr. Swaim has put in evidence, and I presume you have not heard quite all of it, as to the various changes that have been made in the tariff, and in the rules affecting rates, from the time that the joint rates were put in effect, until the injunction of Judge Van Devanter; I will ask you to state generally, without going into details, what brought about the various changes that have been made?

A. It was brought about on petition from the shippers.

Q. Did you have hearings in all instances?

A. Yes, we always gave notice to the railroads and had hearings on it.

2073 Q. Some of these changes, Mr. Swaim has stated were brought about by adjusting your rates to the interstate rates, I wish you would explain that?

A. I don't know that we always adjusted rates that way but we had certain articles in the same group they used in interstate rates; in some instances, the rate we made was lower than the interstate rate.

Q. I am referring particularly to making groups and mixtures.

A. We did always confine ourselves to the groups they made in interstate rates, but whenever we found that they had an article in the interstate group, and the shippers applied to us for it, we thought it was a good reason why it should be put in the state group.

Q. If the railroads had voluntarily grouped the articles that way, and some interested shipper should ask that they be grouped in the same way, the railroads ought to make the same group on state shipments, you thought, unless they had a good reason for not doing so?

A. Yes, sir.

Q. In the various changes that have been made by the Commission on the rates, what has been the attitude of the railroad companies in the hearings before the Commission, while you were a member of it?

A. I don't know that I understand the meaning of your question.

Q. Have the railroads assisted the Commission in arriving at a fair determination of what the rates should be, when the question of change of rate has been up before the Commission?

2074 A. I will say that the first four or five years I was on the Commission, they didn't show much disposition to give us much light on these investigations, at that source to arrive at the proper rate; after that, they rendered us more assistance, and when we asked what the rate should be, they seemed disposed to give us their ideas about it.

Q. Was the Railroad Commission, while you were a member of it, so far as your knowledge went, ready at any time to change the rates so as to produce a better revenue to the railroads, upon a showing that the revenue then received, was unfair or non-compensatory?

A. If any instance had been shown us to that effect, we would have increased the rate, of course.

Cross-examination.

By Mr. MOORE:

Q. During the time you were a member of the Commission, did it take the most of the time of the members of the Commission to discharge their duties?

A. A man who is conscientious about giving his services to his state, it would.

Q. What I meant to ask was, if the duties of the office were such that it required the time of the members of the Commission pretty much all the time?

A. I thought so, so that I stayed there all the while, in the office.

Q. How often did the Commission hold meetings?

2075 A. Never less than once a month, and frequently two or three times.

Q. What was usually done at those meetings, what was the object of holding the meetings at those intervals?

A. To consider petitions from shippers, in regard to the freight rates, building depots, etc.

Q. Was a good deal of the time of the Commission taken up in hearing complaints about rates?

A. During the interval between these meetings, we considered that amongst ourselves; at these meetings, most of the time was taken up in discussions with regard to freight rates.

Q. Now, you made about 75 changes during the period of time covered by Mr. Swaim's testimony, and all of them were reductions of rates; do you recall any increase of rates you made during that period?

A. I do not now.

Q. You were asked if the railroads made an application to you at any time, to be allowed to go back to the old rates that were enforced before the Commission put this rate in operation in 1900; would you have listened to such an application as that, Mr. Hampton? Would the Commission have listened to an application or would it have granted an application on the part of the railroads, to be allowed to restore the old rates effective before the Commission came into existence?

A. I think if the railroads had made a good showing in their petition, we would have given them a hearing on it, but I doubt very much whether they would have been able to show it

2076 or not.

Q. You say a great deal of your time was taken up in adjusting rates; I believe you stated that a moment ago?

A. Yes, sir.

Q. And yet all your adjustments consisted of reductions, did they not?

A. The petitions we had were from shippers, and, of course, they would not have petitioned for an increase; if we acted at all, it was a decrease.

Q. Did the railroads at any time object, or did they come before you when you gave them notice of hearings?

A. Yes.

Q. Did they make any objections at any time about the changes you made in rates?

A. Indeed so.

Q. They frequently objected to your changes?

A. Most always.

Q. The reductions were made over their objection then?

A. In the majority of the cases, I would say yes.

Q. Did you understand the railroads as acquiescing in those changes, further than they had to carry them out?

A. After the changes were made, I think frequently they did, when they really realized that the rate would be compensatory.

Q. You think that; that is merely your opinion, is it not?

A. Yes, sir.

Q. Didn't the railroads frequently ask for re-hearings after
2077 you put in rates?

A. No, sir, not frequently, and I don't call to memory now where they did in any instance, except on the oil rates.

Q. What change was made in the oil rates?

A. In the first instance, the class rate we applied on oil was cut half in two; afterwards, it was raised by the Commission to 50% above that.

Q. Raised 50% above the rate after the cut?

A. Yes, sir.

Q. What regulations did the Commission adopt in regard to running oil trains by railroads running trains carrying oil cars?

A. They didn't make any in regard to oil cars; we made rules in regard to their receiving less carload shipments.

Q. Was there not a rule made, requiring the railroads to transport oil trains carrying oil, three times a week from Little Rock?

A. That is what I was leading to just now, that they should receive it on three days instead of one.

Q. That is a rule operating without regard to the tonnage the railroad received?

A. Yes, sir.

Q. That rule was an arbitrary one, and required them to carry trains out, without regard to the loading, isn't that true?

A. I don't understand what you mean.

Q. They required trains to go out three times a week?
2078 A. They required those oil shipments to be received three times a week.

Q. Didn't that impose, and wasn't there complaint made before the Commission, that that imposed a very great hardship upon the railroads?

A. I think the railroads did object to making it more than one day.

Q. Wasn't that showing made that sometimes a train would go out as far as Poplar Bluff, and the entire freight receipts would amount to a mere triffle, not more than enough to move the train?

A. That was a very flimsy showing they made on that.

Q. It didn't impress the commission?

A. No, sir.

Q. And wasn't that true in regard to the view the Commission took as to a good many objections the railroads made.

A. They sometimes made a reasonable showing; there was no reason in that at all.

Q. It was also true that the members of the Commission thought

the railroads failed to make a showing at the time the railroads made their application at St. Paul, that the rates were non-compensatory?

Question objected to at the time by attorney for the defendants.

A. I couldn't answer that, because I was not up there myself.

Q. You say the Railroad companies, during this period of time, were objecting and you were busy investigating the rates, and yet in a period of four years, you made 75 reductions and no
2079 increase you can recall; that is your statement, isn't it?

A. No, sir.

Q. What are the facts in that respect?

A. During a period of about seven years.

Q. During that period of 7 years you made no increase in any rate?

A. We made that oil increase that I spoke of awhile ago, but it was after reducing it, and then many short line rates, we increased the branch line rates.

Q. I believe you made a change in the rate on sugar, didn't you Mr. Hampton?

A. We changed that 300 mile haul on sugar.

Q. You changed it from 15 cents to 13 cents?

A. Yes, sir.

Q. What was the object of that change?

A. We thought probably it would force Mr. Perkins' road to give them a better rate to Texarkana from New Orleans.

Q. It was for the purpose of adjusting interstate rates?

A. We didn't think it would affect hauls in Arkansas.

Q. It was for the purpose of affecting and re-adjusting the interstate rate?

A. It was for the purpose, in my own mind, thinking it would have that effect.

Q. Why did you think it would have that effect.

A. Because the Texarkana people could ship around by Helena and over to Texarkana, and get a less rate than the Kansas City Southern were giving them.

2080 Q. How could they do that; explain to me how they could do that?

A. If the railroads built the rates as they sometimes do, take the rate from New Orleans to Helena and add the rate from Helena to Texarkana, the sum of those two rates would be less than they were coming the other way.

Q. At the time this order was made, the Iron Mountain Railroad and the Kansas City Southern hauled sugar from New Orleans to Texarkana at the same rate, prior to that time?

A. I don't remember.

Q. If your purpose was to force the reduction in the rate of the Kansas City Southern, it must have grown out of the fact that the Iron Mountain was at that time, charging the same rate as the Kansas City Southern was, otherwise, there would have been no need

to put compulsion upon the Iron Mountain, causing it to lower its rate.

A. Not necessarily.

Q. Why did you think it necessary to take that action in order to force down the rate of the Kansas City Southern?

A. The Kansas City Southern could be charging rates we would think would be too high, and yet be just in line with the Iron Mountain rate or the other rate.

Q. In what way did you think the reduction of the rate between Helena—of the intra-state rate between Helena and Texar-
2081 kana would bring about a reduction of the rate of the Iron Mountain from New Orleans to Texarkana?

A. I was not figuring on the sugar coming by the Iron Mountain from New Orleans.

Q. I understood you to state awhile ago, that your object was to force the Kansas City Southern to give a lower rate by competition with the Iron Mountain, though the Iron Mountain would bring the sugar further, from New Orleans to Texarkana, via Helena.

A. No, this sugar came up by Shreveport, over the Kansas City Southern, from New Orleans.

Q. Repeat then the statement made awhile ago in answer to my question, as to the manner in which the intra-state rate from 15 to 13 cents would affect the rate from New Orleans into Texarkana; I asked you that question; I wish you would repeat your answer to it?

A. My idea was if the railroad did as they sometimes do, build the rates on the sum of the locals, so to speak, that the direct rate would give them some rate that would be less than the Kansas City Southern had in.

Q. In other words, you thought the sum of the locals in the different states, between New Orleans and Texarkana, via Helena, would control the interstate rate, did you not?

A. Yes, sir. I thought it would give Texarkana a better rate.

Q. Why did you think that? What suggested such an idea as that to you?

2082 A. I had been informed that railroads sometimes built their rate in that manner, and rather than let the shipment be diverted around by Helena, they would rather give a rate by the other way.

Q. The Commission put in this state rate, for the purpose of forcing down the interstate rate?

A. We hoped it would have that effect.

Q. That was the purpose of it, wasn't it? That was the purpose of the order?

A. I guess it was.

Q. I believe you stated that the railroads acquiesced in this joint rate, did I understand you to state that? Did you mean to state that?

A. Yes.

Q. Isn't it a fact that the railroads were so much opposed to the application of a joint rate by the Commission, that they carried the

question, to the courts, and litigated the power of the Commission, and procured a ruling of the Court that the commission had no power to do that?

A. Formerly they did.

Q. Referring to your statement that the railroads acquiesced in joint rates on different lines, is it not a fact that the railroads litigated that question and carried it to the Supreme Court of the State before those rates were put in? That is true, isn't it?

A. That is my impression.

Q. They were not acquiescing at that time, in the Commission putting in joint rates?

A. No, sir.

2083 Q. When did they acquiesce? When did they have a change of heart and acquiesce?

A. It was when we put in a joint rate.

Q. I believe you stated the plaintiffs in these suits acquiesced, didn't you?

A. The Iron Mountain and Cotton Belt?

Q. Yes?

A. All the roads as I understood it.

Q. Did the Commission publish a tariff of those joint rates?

A. We did.

Q. It was an official publication, wasn't it?

A. Yes, sir.

Q. I hand you here a document marked St. Louis, Southwestern Railway Co., supplemental No. 22, Joint Distance Tariff, #3418, now I want you to state if that was not filed in the office of the Commission by the St. Louis, Southwestern Railroad Company, with the indorsement in red letters on it, which appears there now, on the paper which I hand you?

A. "Filed under protest"?

Q. Yes?

A. Yes, sir, all their tariffs they filed that way.

Q. The railroads, at the time you put in that joint rate, prepared a tariff based on it and filed it with the Commission, and that tariff contained a written protest across the face of it, didn't it?

A. Yes, sir, it is not my recollection that any of the others

2084 did that except the Cotton Belt.

Q. Will you read that indorsement on there to the stenographer, please?

A. "Published by the St. Louis Southwestern Railway Co., under protest, and the right to contest same is reserved."

Mr. HILL:

Q. What date is that?

A. That is not shown.

Q. The date of the tariff will show?

A. They didn't date it where they put that across it; I don't know when the tariff was published.

Examination resumed.

By Mr. MOORE:

Q. Read the date out of it?

A. July 10th, 1903; the Cotton Belt made that rule even if the rates were made three times higher than they were; they always had protest written across it. They may have had a mental reservation that they did not want the tariff, but as I take it, they accepted the tariff, and went on and put it in according to the order we made.

Q. You base that upon the fact that they did go on and obey the orders of the Commission?

A. Yes, sir.

Q. You would have been likely to have had the sheriff after them if they had not done that?

A. We would have made them pay a penalty.

2085 Q. What did I understand you to say was the basis of the joint rates? Did you say 80% of the sum of the locals?

A. We tried to make it so it would produce 80% of the sum of the locals.

Q. Did your joint tariff have that result?

A. I have never figured it to see; I think it did.

Q. What is the rate for 200 miles, we will say, on a shipment of sugar?

A. I couldn't say, unless I had a tariff before me.

Q. I have a tariff before me; it is 13 cents on carload lots, do you know what the rate for 100 miles is?

A. No, I don't remember any of those rates now.

Q. It is 11 cents; now, Mr. Hampton, suppose you made two shipments, one of 100 miles each, continuous shipments on one line of railroad, what would it come to at 11 cents?

A. 100 miles on each road?

Q. Two shipments on one road at 11 cents per hundred miles, would be about $22. wouldn't it?

A. You mean 20 miles?

Q. I say, two shipments of 100 miles each would amount to what, on a basis of 11 cents per hundred?

A. Passing over two roads?

Q. Passing on one road or two roads?

A. It depends on the weight.

Q. Well, assume that you shipped a hogshead of sugar from Little Rock to a point 100 miles distant, on the Iron Mountain Railroad; its destination is 100 miles further than that point; now, your tariff rate for 100 miles on a similar shipment is 11 cents; now, if

2086 it is transferred to another line of railroad and carried 100 miles further on that, each one of those roads, under the single line tariff, would get 11 cents; that would be 22 cents, for transporting it on single line rates for 200 miles, isn't that correct?

A. If there were no joint rates.

Q. Under your joint rates, it would amount to 13 cents, wouldn't it?

A. What did you say the rate was for 100 miles?

Q. 300 miles is the maximum; we haven't got to that. The point I want to get at is this; your basis of 80% was not observed there?

No, not where the maximum is reached.

Q. That would be instead of 80%, that would be about 17 cents, 80% of 22; your rule didn't work out that way, did it?

A. It worked out in no instance where the maximum was reached.

Q. I will put the matter in another way; under your rule, it provided that the total htrough joint rate shall not exceed that charged on a single line haul of 300 miles, on any of the commodities mentioned?

A. Yes.

Q. Your rate for 300 miles on sugar is 13 cents?

A. Yes, sir.

Q. Now, your rate for 5 miles is 13 cents?

A. No, I reckon not.

Q. I have that before me here; commodities, carloads, it is 8 cents?

2087 A. You said 13.

Q. I said for 5 miles; the differential is 5 cents; that makes 13 cents; you have the same rate for hauling sugar 5 miles as you have for 300 miles, under your tariff?

A. No, sir.

Q. If it happened to go over two lines of railroad?

A. If it happened to go over the distance on one road, that would make it 8 cents.

Q. To put it at a distance that might cover two lines, say 25 miles, the joint rate on two lines of railroad for 25 miles is the same that it is for 300 miles?

A. You mean 25 miles on each road?

Q. I mean a shipment going over two lines of road.

A. For a distance of 25 miles?

Q. Yes; here is the 25 mile rate; it is 8, with a differential of 5 cents?

A. It would be 13 cents.

Q. Your rate of 13 cents applies on a joint rate of 300 miles, as well as on a single rating, doesn't it?

A. Yes, where it reaches the maximum.

Q. What is the theory of distance tariffs; on what theory is it made? Why did the Commission adopt that theory?

A. Because they wanted to give every shipper the same rate for the same distance.

Q. Does that illustration I give you give every shipper the same rate for the same distance?

A. Every point for the same distance, would give the same rate.

Q. Do you count 20 miles at 13 cents per hundred weight

2088 for sugar, the same as 300 miles?

A. Any town in this state, for a distance of 25 miles, would get exactly the same rate; any town where the 300 maximum applied, would get the same rate; that is what I meant by every town getting the same rate for the same distance.

Q. The intermediate points, intermediate distances, are not uniform then?

A. That is not what we intended.

Q. Isn't it the intention of distance tariffs to be constructed upon a scale?

A. My idea is to give every town the same advantage for the same distance?

Q. Give every town the same rate for the same distance; take a town that is 5 miles away from the commercial center, and you give it a rate of 13 cents a hundred pounds, and take another town that is 200 miles away, and give it the same rate, is that carrying out your principle?

A. Yes, because they get the same rate as another town the same distance away.

Q. What you call a distance tariff is one that makes the rate uniform between different points; uniformity of distance between different points and the common market, but it takes no account at all of the distance of the transportation?

A. They do take an account of the distance in transportation, so far as the rate is concerned; otherwise, our tariff would have a straight line haul 13 cents.

Q. You would give a town 300 miles away the same rate as one 25 miles away?

2089 A. Where it passes over two roads,—yes, we did in that instance.

Q. Where is lime produced, in what part of this State?

A. It is produced up in Washington and Benton County, and just above Batesville.

Q. And where is the market for it, what part of the State is the market in?

A. All over the state I guess.

Q. The markets then are some of them your maximum rate distance, 300 miles from the producing point? Your markets are 300 miles away from the point of production?

A. There are a few that far.

Q. Some of them are?

A. Yes.

Q. Your maximum rate for 300 miles is 9 cents per cwt. Now, your rate for 55 miles to 75 is six cents; your differential is 3; that is 9 cents?

A. Yes, sir.

Q. Now, in any market that has to be reached by two lines of railroad, the rate is the same for from 55 to 75 miles that it is for 300 miles?

A. In any instance where the maximum is reached, that would be the rate.

Q. Is it not necessary, to reach any point on the Frisco road in the extreme northwestern part of the State, to go over two or more lines of road, in transporting *lime* to market in this State?

A. Yes, when you go any distance.

2090 Q. Do you regard that as a logical tariff, a tariff that has an effect such as I have called your attention to?

A. Well, yes, because it does not cost much more to haul for two or three hundred miles than it does for one hundred miles; if you make the difference according to the distance all the way, it would be prohibitive, and no shipments could be made, and it is better for the railroads and for the shippers both, to have them ship at these rates.

Q. The result of it, however, is to give some for a certain distance, the same precisely that one line would get for a shorter distance?

A. It has that effect in many instances.

Q. Now, do you mean to say that that scale of rates was suggested by the railroad companies?

A. I mean that Mr. Stith—I asked him the question, what he thought the joint rates should be, and he said 80% of the sum of the locals.

Q. I am asking you the question, if you mean to state that a tariff, if the joint tariff, operating as I have just illustrated by questions I have asked you and by the instances I have shown, was suggested by the railroad companies?

A. We did not go into the effect of the maximum haul; that was not brought up at the hearing.

Q. It is a fact that these details were not discussed at the time you arranged this tariff, and that you had the meeting with the representatives of the railroads?

A. I do not remember that that maximum question was discussed.

2091 Q. Can you point out a single instances on this tariff, where the joint rate is 80% of the sum of the locals?

A. I don't know whether I could or not, without going over it; the rate clerk was instructed to get up such figures for differentials as would produce that effect, and we depended on him to a great extent.

Q. Why did you follow the interstate practice of railroads in the particulars which you referred to a while ago?

A. Because we thought the railroads would be fair to themselves, and would not make such mixtures in interstate shipments as ought not to be mixed.

Q. Tell me what you mean by that statement, that you thought they would be fair to themselves?

A. I did not think they would put in such articles as ought not to go in interstate shipments, because we had no power to make them do it.

Q. Don't you mean by that this: You thought if the railroads could afford, with reference to the cost of transporting this commodity, to add the particular item or particular commodity to the group —commodity group—if they did it, it indicated they could afford to do it, with reference to the cost of transportation, and if they could afford to do it in interstate transportation, they could afford to do it within the limits of the state; isn't that what you mean?

A. The mixing of those groups gave St. Louis and Memphis an

advantage over Arkansas cities in some instances, and we felt like we ought to be protected, and if they could afford to do it in interstate business, they could afford to do it on state busi-
2092 ness.

Q. Your intention was to do it by adjusting your rates to interstate rates?

A. That governed us frequently in making the mixtures.

Q. You did that because you thought there ought to be, in justice to the shippers of Arkansas, a just and fair relation between the state and interstate rates, that is what you did it for, wasn't it?

A. I don't believe I understand that question.

Q. You stated a moment ago, in shipping from Memphis to St. Louis and adding different commodities to the mixture and in not doing it within the state, there was unfairness practiced against the shippers of the state; if that is true, you recognized that there is a relation between state and interstate rates, that must be kept fairly adjusted in order to avoid injustice to the state shipper.

A. We thought that the railroads, in moving a shipment for 50 miles in Missouri and 50 miles in Arkansas, if they had a certain rate for that, they could afford to move it 100 miles in Arkansas at the same rate, that crossing the line did not cut any figure in the revenue.

Q. What they could to do on a haul of fifty miles in each state, they could do on a haul wholly in Arkansas?

A. Yes.

Q. What do you mean by "afford to do"?

A. If it produced them revenue for 100 miles, half in Arkansas and half in Missouri, it should produce them revenue for a haul of 100 miles wholly in Arkansas.

2093 Q. You were assuming the rate was based on the cost of transportation?

A. Yes.

Q. And that they should be just, on account of the fact that they were supposedly based on the cost of transportation—that was your idea, was it?

A. The railroads themselves do not always adjust rates on the cost of transportation.

Q. But you acted on that theory in that instance, didn't you?

A. As I stated awhile ago, we considered it a discrimination against Arkansas shippers, for those interstate mixtures to come in, and we didn't see why, if it was right in that instance, it was not right in Arkansas.

Q. When did I understand you to state you began your duties as railroad commissioner?

A. January, 1903.

Q. I believe you say the railroads showed no disposition for four years, to render any assistance to the Commission?

A. They didn't seem to, as much so as they did the latter years.

Q. What did they do in that direction, in 1907?

A. Frequently we tried to adjust the rates here in Arkansas;

Mr. Calef and Mr. Stewart would help us in trying to arrive at what was right between the shipper and the railroad.

Q. In what way would they help you?

A. Give us their opinion; the first three or four years, they seemed to be afraid, and wouldn't give it.

2094 Q. Did you usually act upon their opinion when they gave it to you?

A. Not altogether; it would have its influence with us, and not only that, but we would get up tariffs from other states, and tried to arrive at what was right.

Q. I think you stated on your examination in chief, that in basing your joint rate on 80% of the sum of the locals, you had reference to the practice in other states, did I understand you correctly?

A. No, sir.

Q. You referred to the two things in the same connection; you said you made inquiry as to what prices were in other states?

A. We made inquiry as to what rates were in other states.

Q. I mean the practice in fixing rates?

A. Yes, and what the railroads were doing in interstate business.

Q. And it was on that basis that you reached the conclusion that 80% of the locals would be a fair basis, was it?

A. Mr. Stith's remark had more to do with me than any other investigations I made.

Q. If it turns out your tariff does not yield, or does not turn out that way in actual practice, then you did not accomplish what you intended when you started out?

A. No, as a whole, if the tariff does not produce in the neighborhood of 80% of the sum of the locals, we did not do what we thought we were, because the rate clerk was instructed to make up the

2095 tariff that would bring that effect.

Q. Who was the rate clerk?

A. Conley.

Q. You stated a while ago that it did not cost much more to transport commodities 200 miles than 100. What, in your opinion, enters into the cost and into the——

A. I have never studied out that question, but I just got that from general information. I have heard railroad men say that themselves; that it didn't amount to a great deal more for the longer distance than for the shorter.

Q. What are the principal factors that enter into the making of commodity rates?

A. Well, you should consider the revenue to the railroads, and you should also consider the interest to the shipper.

Q. Well now, treating it from a standpoint of——

A. And you should also consider what the commodity is.

Q. What do you mean by that?

A. Well, you might get in a rate which would be prohibitive.

Q. Now, in determining what is the revenue what factors enter into your consideration in fixing commodity rates?

A. Well, I have an idea what factors entered into it, running trains and things of that kind; that is, the expense, but we never

attempted to do anything of that kind. We got our information from the railroad people themselves. Talking to them we got the best information we could and just guessed at it and put in the rate we thought was right.

Q. What characteristics—inherent characteristics—in the business of transportation entered into the consideration of the Com-
2096 mission in fixing commodity rates?

A. I don't understand just what you mean by characteristics.

Q. Why, what difference would you make, if any, and on what grounds between two articles, one of which was bulky and light and the other dense and heavy?

A. Well, of course, we were governed by the differences the railroads had been making themselves.

Q. What I want to know is did the Commission itself study these subjects and consider them in fixing the tariffs for themselves?

A. Well, we knew 100 pounds of corn should bear a less rate than 100 pounds of dry goods or calico.

Q. Why?

A. Well, corn is heavy and a less valuable article and the shipper can not pay as high a rate.

Q. Well, that is the commercial condition you are considering there now. What considerations were covered with reference to its effect in compensating the railroad company for the services rendered. Did you take that into consideration at all?

A. I didn't hear that.

Q. I say did you take into consideration the compensation that would accrue to the railroads in fixing the rates?

A. Yes, sir.

Q. Now, take the two instances you spoke of, for instance, corn and calico, in what respect did those two articles differ in the opinion of the Commission as to a rate that would be compensatory to the railroads?

2097 A. Well, if we didn't have the benefit of the experience of others and of railroad men themselves, and tariffs we got from them and from other states, we wouldn't know anything about it at all.

Q. Does the fact that the movement is small have any effect on the Commission in fixing their rates?

A. Why, of course, we made less than carloads higher rates than carloads.

Q. I am not speaking now of it in that respect, but, taking a commodity, the entire movement of which in a state was small, infinitesimal, to use a word that was used here today, did that have any effect on you in fixing the rates of that article as against one of much larger tonnage?

A. I presume it did, but if it hurt the railroad it wouldn't hurt much and I would be willing to take chances on it. While if it was an article that moved in larger quantities, if it was a rate they couldn't stand, it would hurt them worse.

Q. You thought you would do them less injustice on tonnage of a smaller bulk or volume than on larger?

A. If we happened to make a mistake it would be less injustice, of course.

Redirect examination.

Mr. HILL:

Q. In making joint rates is it not customary in all tariffs,
2098 both state and interstate commission tariffs, to allow a higher rate where the given distance is over two roads than where it is over one road?

A. Yes, sir.

Q. And in putting in those joint rates you were trying to conform to that practice?

A. Yes, sir.

Q. You think that is a just tariff, where commodities move 25 miles on one road and 25 miles on another road to give a higher rate than if it moved 50 miles straight away?

A. If there is more expense attached to the handling by reason of the junction point the railroad should have more compensation.

Q. And that is the theory upon which you put in these joint rates?

A. Yes, sir.

Q. Now, if the railroads had shown to the Commission while you were a member of it that your rate clerk had made mistakes and that your joint tariff as a whole did not represent approximately 80 per cent of the local would your Commission have corrected that rate?

A. Yes, I think they would.

Q. Mr. Moore has questioned you about these 75 instances of changes in 5 or 6 years. I will ask you if, in addition to these 75 instances of changes, the Commission did not pass upon other complaints where they did not make reductions?

A. Yes, sir.

2099 Q. Have you any idea how many?

A. No, I can't recall now.

Q. As many or more than where you granted the petitions?

A. No, I guess petitions were granted in more instances than were turned down.

Q. You did turn down a great many did you not?

A. I don't remember how many now.

Q. You discussed informally with shippers many questions upon which, after discussing with you, they did not file formal complaints, did you not?

A. Yes, sir.

Q. That has been the practice of the Commission always, has it not?

A. Yes, sir.

2100 J. D. WATSON, being first duly sworn, on examination deposeth as follows:

Mr. HILL:

Q. Mr. Watson, when you were on the stand in St. Louis you were requested to furnish a statement of interstate adjustments to meet the court tariff. Have you prepared that?

A. I have entirely overlooked it until you called my attention to it just now.

Q. Will you get that up for me?

A. I will endeavor to do so as promptly as possible.

Q. You will find on page 310 of your testimony where you were to prepare that. I believe there was one other thing I thought was here, but I don't see it. I want you to also give me your interstate tariffs, not to put into evidence, but the dates from your tariffs from November 2nd until the court tariff was made, which I believe was June 1st.

A. You want the interstate tariffs to cover readjustments made between November 2nd and June 1st?

Q. Yes, sir.

A. You mean all the various interstate tariffs?

Q. That would affect the Arkansas tariff.

A. Interstate traffic?

Q. Yes. Now what was called for at St. Louis at this one page was this, those that were just rates according to the court tariff.

2101 A. Well, the tariffs were not readjusted to any very great extent between November 2nd and June 1st.

Q. Well, I would like to have those tariffs. How soon can you get them up?

A. I guess I can possibly have them here next week.

Q. You understand I want all interstate tariffs that would affect the Arkansas traffic to November 2nd?

A. Yes. There will be quite a trunkful of them. You want the tariffs themselves, as I understand?

Q. Yes. You can indicate in the tariffs where these adjustments are. You see I don't want to encumber the record with too much tariff material. I suppose we will have to have the tariffs here for examination and you can show it more clearly on the tariffs themselves than any other way, can you not?

A. Yes, sir.

Q. Well, you will have them for us next week?

A. Yes, sir.

2102 A. R. BRAGG, being duly sworn and examined, deposed as follows:

Direct examination.

By Mr. HILL:

Q. Will you please state your name, age, residence and occupation?

A. A. R. Bragg, residence, Little Rock, Ark., Manager of the Little Rock Merchants Bureau.

Q. How long have you been manager of the Little Rock Merchants Freight Bureau?

A. Five years.

Q. What are your duties in that bureau?

A. My duties as manager of the Merchants Freight Bureau are really as a traffic manager for the merchants and manufacturers, to give them their rates, see that they are protected against other jobbing centers, or manufacturing places, in the matter of freight rates, and act as their agent in a general way, so far as traffic is concerned.

Q. Your duties in this freight bureau necessarily render you familiar with the existing freight rates in the state?

A. Yes, sir.

Q. Prior to your connection with the Merchants Freight Bureau, what was your occupation?

A. I was in the service of the St. Louis, Iron Mountain Railway for 25 years; I was in the freight department all the time,
2103 all the way from local freight agent to division freight agent.

Q. I wish you would state the various positions you held in the railroad service?

A. That would be pretty hard; I might say practically from messenger boy, almost.

Q. To Division Freight Agent?

A. Yes, sir.

Q. How long were you division freight agent?

A. About fifteen years.

Q. You are familiar with the freight rates, state and interstate, in the State of Arkansas, and have been for a number of years?

A. Yes, sir.

Q. In fact, that has been your study for the last 25 years, ha-n't it, or something like that?

A. Yes, sir, I have been more or less connected with it all the time, in both capacities, as an employee of the railroad, and an employee of the merchants.

Q. Your employment by the merchants causes a familiarity with the rates, equal with that of an employment by the railroad, doesn't it?

A. I think so; that is, in a general way; I am not probably as familiar with the details as some of the traffic men.

Q. I wish you would state from your knowledge and familiarity with the freight rates prevailing in this country, the manner or system on which they are constructed?

A. You mean the method of making rates?

Q. Yes.

2104 A. Well, they have two methods—one is by conference among themselves; that is, with reference to competitive rates; the individual or local tariffs, I think, are made up in their offices, by their rate people.

Q. Their competitive rates are made in conference?

A. Yes, sir, altogether; they are promulgated by a chairman or agent.

Q. You are referring, I presume to the interstate rates?

A. Yes, sir.

Q. Prior to the adoption of a commission tariff, how were the state rates made?

A. They were made in practically the same way; they didn't, however issue—their tariffs were not—I don't think their tariffs into Arkansas were issued by a chairman, not all of them, some of them were, and some were not; some of the tariffs even to competitive points were not issued by a chairman.

Q. Prior to the commission rates were there any what was known as jobbing rates? to commercial centers in the State?

A. Yes, sir, between certain points; that is, from jobbing centers to local territory, what is known as non-competitive points.

Q. In other words, the territory tributary to a common jobbing center, had rates made for that particular territory, was that it?

A. Yes, sir.

Q. Did much of the traffic of the state move under those jobbing rates, prior to the Commission's tariff?

A. All of the traffic originating at points from which these
2105 rates applied; of course it was all intrastate traffic, and it was of course, all moved under those rates.

Q. The point that I am getting at is this, what proportion if you could estimate it, of the traffic of the state, intrastate traffic, moved under the jobbing rates?

A. A very large percentage of it; at the time those tariffs were in effect; I could not approximate the percentage, but it was a large percentage, because there was just a few jobbing centers at that time, that supplied the territory adjacent.

Q. Most of the intrastate traffic moved on these tariffs for jobbing centers?

A. Yes, sir, that is merchandise; they had, at the same time, tariffs covering other commodities, such as coal, cotton, cotton seed, and things of that kind.

Q. Were there in effect in this state prior to the Commission tariff, many special rates?

A. These were all special rates.

Q. I wish you would define just what you mean by special rates.

A. Well, a rate that is made, what is called a jobbing tariff, a jobbing tariff, of course, would be a special tariff, that would cover classes and commodities, because it would be different from a mileage tariff, and a great many articles would be taken out of the classification. The classification of that article would be ignored, and it placed under a commodity, just as it is in all the tariffs today; that is what the railroad people call a special rate.

2106 Q. Wasn't there another kind of special rates; these rates from one given point to another given point on certain commodities?

A. Those are the tariffs I am speaking of now; for instance,

there was a tariff from Pine Bluff, over the St. Louis, Iron Mountain & Southern, I think over the Cotton Belt, I wouldn't speak advisedly as to that—there was one from Little Rock and one from Ft. Smith; one from Van Buren, and one from Texarkana; those points at that time were the principal jobbing centers in the state.

Q. Those were what were commonly called jobbers' rates?

A. Yes, sir.

Q. What I wanted to call your attention to, was this, wasn't there rates on lumber, say from Pine Bluff to Fort Smith and other given points, on given commodities?

A. Yes, sir, there was a lumber tariff.

Q. Were there many of those special rates, I am taking lumber for an instance?

A. Nearly everything moved under special rates in those days.

Q. I wish you would mention some you call to mind, that moved under special rates?

A. Practically everything moved under special rates, that is, tariffs prepared for the business.

Q. Those tariffs were then prepared to meet some particular industry or commercial condition?

A. All the time; that is, the jobbing business in those days, was adjusted in its incipiency, and the lumber business was practically the same and the cotton seed oil mill business, and the cotton business, and it was the policy of the railroad people at that time,

2107 to build tariffs that would take care of the business.

Q. Take for instance brick; I believe it has been shown here in some of these proceedings, that a brick industry sprang up here, and probably at Malvern, and other places, was there any special rate put in effect, to take care of that industry?

A. Yes, sir.

Q. Very low rate, wasn't it?

A. Yes, sir.

Q. Were there many instances of that kind scattered over the state, where there was a very low rate given to take care of some given commodity or some new industry?

A. Yes, sir, as I say, it was the policy of the railroads to make rates they found necessary to take care of these different industries.

Q. Now, in framing these various rates, jobbing rates and special rates, and various rates that were in force in this state, what considerations were controlling in fixing a rate?

A. What period?

Q. I am speaking generally, say before the Commission tariff, and then I will take it up later?

A. There were commercial conditions, both commercial conditions and competitive conditions, that brought about a good many of those rates; those rates were a kind of patched up, all over the state.

Q. What consideration, if any, was given to the cost of the service, in fixing these rates, that you are referring to?

2108 A. I can't answer that; I don't think that that always entered into it; I couldn't answer it definitely, but I don't think that that always entered into it, at the time that these merchandise rates were made; a good many of them were what was called merchandise rates.

Q. What data, if any, did the railroads have in order to determine what was the cost of the service upon any given commodity or any series of commodities?

A. I couldn't answer that, I don't know that they had any.

Q. Take for instance coal, in making a coal rate, or a lumber rate or merchandise rate, would the railroads have before them in the formulation of those rates, any data by which they could determine the cost of carrying that coal or that lumber or that merchandise?

A. I don't think they have ever been able to ascertain just what it does cost them; that is, on each given commodity.

Q. After the Commission tariff went into effect, which I believe was in 1900, wasn't it, the first?

A. 1901, I think it was.

Q. What change took place in rate making in Arkansas?

A. You mean the interstate or intrastate?

A. I mean both?

A. Of course, the Commission's tariff fixed the intrastate rates.

Q. Took that out of the control of the railroads?

A. Yes, that practically cancelled all the rates that had been issued prior to that applying on strictly intrastate traffic.

2109 Q. Cancelled all these jobbing tariffs, all these special rates and put in force a distance tariff?

A. I think practically all of them were cancelled.

Q. What change, if any, took place in the formulation and manner of formulating the interstate tariffs, after the Commission tariff went into effect?

A. I can only speak for the St. Louis, Iron Mountain & Southern, because I was in their employ; I only know in a general way about the St. Louis Southwestern; I think possibly—I don't know just how much time elapsed before they revised their interstate rates, that is, to their local territory, points that were not competitive; they adjusted those rates to practically the Commission tariff in mileage from Memphis.

Q. There has been a good deal said in this testimony about the Memphis adjustment, to which you are now referring; I wish you would explain that.

A. The rock Island was then the Little Rock and Memphis road, and they followed this commission tariff out of Memphis by practically placing Memphis on the west bank of the river. The St. Louis, Iron Mountain & Southern protested and it was a year and a half, I think perhaps, after the Commission tariff went into effect, before the Iron Mountain placed their rates on the same kind of a basis; that was done by reason of a suit brought against them or a complaint in the city of Memphis, on some alleged agreement with the City, which, for a consideration of certain valuable franchises

in Memphis, they agreed to make any rate from West Memphis to points in Arkansas, that obtained within the State, intra-
2110 state.

Q. About when was that adjustment reached, if you can recall the date, approximately?

A. I think it was in 1902, over the Iron Mountain.

Q. Now, there has been some testimony in this case about other rates from St. Louis and other points being fixed on the Memphis rate; I wish you would explain that.

A. Well, away back twenty odd years ago, they fixed— the St. Louis, Iron Mountain & Southern Ry. Co. into Memphis, and the Frisco, or the Kansas City, Springfield and Memphis as it was at that time, fixed a differential basis between St. Louis, beginning— really it began at the Missouri River, and came on down and came to New Orleans; all these rates were predicated on the Memphis basis, St. Louis was 30 cents, Cairo was 20 cents over Memphis, and St. Louis was 30; in other words, the St. Louis basis was fixed first, and Memphis was fixed at 30 cents per hundred; we are using one class as an illustration, under the St. Louis rate; they went on down below and made the New Orleans rate the same as St. Louis. I am speaking of rates over the line into Arkansas, interstate rates.

Q. Let's get that a little more clear; the Memphis rate was fixed at 30 cents, using one class as an illustration?

A. No, St. Louis.

Q. What was New Orleans fixed at?

A. At the same as St. Louis. If St. Louis was a dollar to Little Rock, it would be 70 cents to Memphis, and a dollar to
2111 New Orleans; Kansas City was ten cents higher than St. Louis; those differentials applied all the way down, and were the basis then and are today the basis of fixing the rates to Little Rock from that territory.

Q. How was that arbitrary or differential arrived at? Was it based on the cost of service or commercial conditions, or what was it based on?

A. No, sir, it is a system that obtains all over the country, and it is used,—it is an arbitrary made by traffic people. If they get together and they find that two rates added together are against the movement of traffic generally, they fix a basis for making a through rate; for instance, from Chicago, Cincinnati, Louisville or Pittsburg, or from any point beyond the river.

Q. Are those arbitraries or differentials determined by differences in costs in moving that commodity or are they determined by other considerations?

A. The cost, I don't think, enters into the basis of making those rates.

Q. What does enter into it?

A. The territorial location is largely the reason for it.

Q. What you might term commercial, competitive and geographical conditions?

A. Yes, sir.

Q. Trade conditions?

A. Yes, sir; in all those rates, I presume, they tried to keep all markets on a parity as far as possible.

Q. That is the object of these arbitraries, to keep these various markets on a parity?

2112 A. Yes, sir, that is the only object; of course, the cost of doing business, I presume is thought of, at the time these rates are made.

Q. Is it any more than thought of?

A. That is all.

Q. Is there any data before them by which they could act upon any more than thinking about it?

A. I don't think so; I would like to explain a little further about this basis; it is followed very closely in making all through local rates; the same basis; Little Rock is the hub, is the axle that controls the entire rates of this state.

Q. You are referring now to interstate rates?

A. Yes, sir; in making rates out of Memphis and St. Louis to local territory, like Arkadelphia or Malvern, or some of these points down here, they hug pretty close to the same basis, the differential between Memphis, St. Louis and New Orleans, that they do to the common points.

Q. Now, take the rates that have been denominated in this hearing as trans-state rates, that is, freight moving across Arkansas that does not stop in it; for instance, lumber from Louisiana North, from states west to common points, such as fruit, from California to the east, and live stock, and various freights that move across Arkansas, without having any destination in the state or originating in the state, what effect, if any, do the state rates have upon those rates?

A. None whatever; you have business from St. Louis to

2113 Louisiana and to Texas and to Mexico.

Q. Business passes through Arkansas, without any destination or origin in Arkansas, and for convenience in this case, it has been termed trans-state business.

A. I don't think Arkansas rates have any effect on those rates.

Q. It is in evidence here, I believe, that the volume of traffic of that class, trans-state traffic on the Iron Mountain is 51% of the total traffic, of the remaining 49% of the traffic; I would ask you if you could estimate what proportion of it is affected by this Memphis adjustment of which you have been speaking.

A. You mean the interstate traffic?

Q. Yes, sir.

A. The traffic affected by the Memphis adjustment?

Q. Yes, and both these other adjustments.

A. That would have reference to only freight that went to non-competitive points.

Q. I want you to make an estimate, if you can, of the 49 per cent of the entire freight traffic now remaining, after the trans-state traffic is taken out of the whole, that would be affected by the Memphis adjustment, which you say is controlled by the state rates; what proportion of this remaining 49% is controlled or affected

by that Memphis adjustment on these arbitraries, based on the Memphis adjustment?

A. The rates to the common points are not made on the basis of the State Commission tariffs, but I should say that that pro-
2114 portion of the traffic that is strictly local on the Iron Mountain railroad, affected by those rates, would be about 15%.

Q. How do you arrive at that 15%.

A. Of course, I can only approximate it; it is merely guess-work; long experience and knowledge, and of course, the amount of traffic that moves out of St. Louis and Memphis and New Orleans, and other points, to what is known as local points, would warrant me in believing that that would be about a fair estimate.

Q. All the traffic moving into common points is not affected by this?

A. The rates are not made on that basis, no, sir.

Q. How many common points are there in Arkansas?

A. I could only approximate that; there is about 25 or 30 of them.

Q. They are all of the larger towns of the state?

A. All points where there are junctions of two or more railroads, are common points.

Q. They are not affected?

A. No, sir; to some extent they are, of course.

Q. How about the freight passing the line like to Poplar Bluff, say from Hoxie to Poplar Bluff; is that affected by this?

A. No, sir.

Q. How about freight originating in the state, that is shipped out, like coal, cotton, cotton seed, cotton seed products, and things of that kind; are they affected by the Memphis adjustment and these state rates?

2115 A. The coal tariffs?

Q. Yes, sir.

A. Not to my knowledge.

Q. How about cotton and cotton seed products?

A. Well, the cotton seed products—no, neither cotton or cotton seed products are affected by the Commission tariffs, that is, interstate.

Q. How about the cotton, I believe you say it is not?

A. No, sir.

Q. How about lumber?

A. I consider it in the same class with coal; it is covered by its own rate

Q. Then, when you go to consider the amount of traffic affected by the rates based on Memphis rates, which are controlled by the Commission rate and others controlled by Memphis, you exclude the products of the state, you exclude the common points, you exclude these intermediate shipments, and you exclude the transstate, and the remaining part, you estimate as something like 15%?

A. I would say that would be a very fair estimate; there isn't anything that goes into the state except merchandise, agricultural im-

plements; there is some coal, but it is not governed by the state rates.

Q. In fixing interstate rates, what effect, if any, has the combination of the locals on those rates?

A. Well, there have been instances where, by using the common point rates, plus the commission tariff rate, that the through rate could be disturbed.

2116 Q. What is the extent of that, speaking generally of the whole rate fabric?

A. I don't think there has been very much of that.

Q. You find instances here and there, I presume, where that is the effect?

A. That has been done; it has been done by shippers of St. Louis and Memphis and other points, and I think possibly that that had its effect on a few commodities into Hope, the only point I know of right now which I have in mind, where it affected the through rate, where they were forced to reduce the through rate which they had established on the regular basis, in order to meet this combination. There were such safe-guards thrown around using those combinations that it was impossible for anyone to use them unless they made a local shipment of a car or less than a car, whatever it might be, out of a point where it was first stopped.

Q. In 1906 and 1907, were there any general advances in the interstate rates in Arkansas?

A. Yes, sir, the first advance that was made to common points, was in February, 1907.

Q. You say the first advance,—by that, what do you mean?

A. I mean the first in number of years.

Q. Was that a general advance all along the line?

A. It was a general advance to common points.

Q. What I mean to say, it was a general advance of all the commodities and classes to common points?

A. Yes, sir.

2117 Q. Or was it to adjust a few?

A. It was an increase on practically everything, probably only of the first three classes in the tariffs, were not included.

Q. To all common points?

A. Yes, sir.

Q. That was in February, 1907?

A. Yes, sir.

Q. Could you estimate the percentage of that increase?

A. The average, I think, at that time was about 15%.

Q. Was there another increase in 1907, prior to obtaining the injunction in this case?

A. The next increase in the rates to common points, was made in September, 1908.

Q. That went into effect before the injunction went into effect?

A. They both went in about the same time.

Q. The injunction went in, if my recollection serves me, the 31st of August, but did not become effective until about the 1st of

November, did the interstate increase become effective before November 2nd?

A. Yes, sir, I think the tariff was issued to be effective September 1st, 1908, and was rejected by the Interstate Commerce Commission, for some reason, and then it was re-issued effective September 24th; I may be wrong in my dates, but I think that is correct.

Q. Could you estimate generally the extent of that advance?

A. That increase, if we had permitted it to go into effect,
2118 to the merchants and manufacturers, would have been about fifty per cent.

Q. That didn't become effective?

A. Not all of it; we had a conference with railroad people, after filing a complaint against them at Washington, at which they did withdraw some of these proposed advances.

Q. I believe that was after the injunction became effective; I don't care about going into any of the matters since then.

A. That was after No. 3 was enjoined.

Cross-examination.

By Mr. MOORE:

Q. Will you explain the system upon which rates are made through conferences, and the instances in which that is done, and the instance in which it is done through individual action of the railroads.

A. How they are made?

Q. Why it is done, what are the controlling considerations affecting the co-operation in the one class of instances, and separate actions in the other?

A. In the making of the rates at common points, which is done by conferences; I don't suppose you want the detail of how they do that?

Q. Oh, no.

A. The rates to local points are made in the general freight office where the clerks make up the rates; the conditions are dif-
2119 ferent of course; one is competitive and the other is non-competitive.

Q. Do I understand you to state that rates to common points are made through conferences between representatives of different roads?

A. Yes, sir.

Q. Why is that true?

A. Well, for uniformity; two lines reaching the same point from the same point, would not want to have different rates; that would not be to their interest, or to the interest of the public.

Q. What would be the effect of rates to common points through independent actions of common carriers, without regard to the rates of others?

A. That would depend upon whether each line adopted the other's rate or not.

Q. Suppose they happened not to do it?

A. They would have two or three different rates.

Q. Would that be beneficial to the public?

A. No, it would not.

Q. If they acted independent of each other, and without conference, there would be different rates upon different lines?

A. Yes, sir.

Q. That really is the reason that conferences are held, for the purpose of adjusting rates to common points, isn't it?

A. That is one reason, and one line couldn't adopt a different rate or reduce a rate, without the consent of the other one, unless they did it arbitrarily.

2120 Q. What were the jobbing centers in this state, at the time the State Railroad Commission began to make tariffs; I believe that was in 1900 and 1901?

A. Little Rock, Pine Bluff, Fort Smith, Van Buren, Texarkana, were the principal points; there were only four or five of them; possibly Camden.

Q. I understand you to state that special rates, which you call jobbing rates, were given by the different railroads, from those centers to the territory in which they obtained?

A. Yes, sir.

Q. What was the purpose of that?

A. As I stated, the purpose was to encourage the building up of the business I suppose.

Q. Could jobbing points be built up and developed on any other system?

A. Well, the jobbing points at that time, the conditions were entirely different from what they are now.

Q. Could jobbing points have been developed in this state under any other practice than that?

A. Well, no, except there might be termed a jobbing point, a little town which had a small wholesale house, one house.

Q. I am speaking in a general way.

A. No, not larger points.

Q. Did the Railroad Commission take any action that affected that practice? The practice, I mean, of establishing special rates for jobbing points?

A. It practically wiped out all special rates.

2121 Q. What was the system inaugurated by the commission?

A. Mileage system.

Q. What was the basis, the central point, the central idea, upon which that mileage system was based?

A. That I could not tell you; of course, all of the railroads at that time, had a mileage tariff, which they used where these points were not taken care of by these special jobbing rates. There might be a shipment move from Russellville to Morrillton, or from Prescott to Arkadelphia; that was taken care of by a mileage rate.

Q. How did it operate in practice, what was the effect upon rates, did it operate uniformly; that article was changed upon distances, the rates predicated upon distances the commodities were hauled?

A. Yes, the further you hauled it, the more the rate was, or the shorter the mileage, the less it was.

Q. What I want to understand, was whether the application of the mileage rate was for the purpose of producing uniformity of rates between different sections or different localities, or uniformity in respect to distances the commodity is hauled; which is the principal and controlling idea in distance rates?

A. Well, I could only answer that personally; I don't believe in mileage rates.

Q. I am speaking about the operation, with reference to the practical operation of the commission rates?

2122 A. A mileage schedule confines the traffic, the state traffic, to a less area in miles; for instance, jobbing centers like Little Rock can reach out under a mileage tariff the same distance as they could under the old jobbing rates.

Q. The rate increases in proportion to the distance of the haul, as it increases?

A. Yes, sir.

Q. Did the result which flowed from the Commission rate, sustain that idea? Did the rates put in by them in effect, constitute a mileage rate, or result in cha-ges or rates in accordance with distance that the commodities were hauled.

A. It could not be anything but a mileage basis, because they had no other in the tariff; everything moved under a mileage schedule.

Q. In order to illustrate what I want to know, I will cite an instance. For instance, the rate on sugar is 13 cents for 300 miles; there is no point in the state scarcely in which a distance of that kind would not have to be covered by two or more lines of railroad; now, the rate for 15, 25, 30, 40, and 50 miles, as has been shown in the testimony of other witnesses—I am speaking now of joint rates—if you had a differential prescribed by the Commission to the state haul for those distances, that would make about the same distance, that destroyed the theory upon which the Commission were building up their rates?

A. You mean, when it reaches a certain point, it goes back

2123 to the single line basis?

Q. Yes?

A. I don't know; I couldn't say that.

Q. What is your view about that, as a railroad man, you say you have had a lot of experience.

A. I don't think I catch what you are trying to arrive at.

Q. I will state a case, then, so you will; we will say a rate on sugar, the maximum rate is 13 cents, covering a haul of 300 miles; we will say the rate for 25 miles on a single line is 8 cents, and if it is hauled on two lines, there is a differential of 5 cents, which would make 13 cents for hauling 25 miles; now, is that an adjustment that, from your experience, will prove out?

A. Not altogether.

Q. Did the commission have any regard to the rates that had been enforced, prior to the time that they put in their first tariff in 1901, in preparing their schedule of rates?

A. You mean do they consider the rates that had been in effect?

Q. Yes?

A. I couldn't answer that, because I do not know upon what theory the rates were made.

Q. What effect did the schedule adopted by the Commission have upon the rates as a whole?

A. It was a reduction; it was a general reduction.

Q. And wasn't the reduction on the whole, as much as about 22½%?

2124 A. I never have had occasion to make an estimate of what the actual reduction was; I couldn't answer that question intelligently; that is a reduction as a whole.

Q. At the time the first commission rate was put in, in 1901, you were Division Freight Agent of the Iron Mountain Railroad?

A. Yes, sir.

Q. Wasn't it shown at the time the commission rate was put in, that it resulted in a reduction in the revenue of the Iron Mountain road of 22½%?

A. I don't remember; that may have been worked out, at the offices in St. Louis.

Q. Were you present during the time the deliberations and conferences were had between the representatives of the railroad companies and the commission?

A. Not all the time.

Q. Was there not a representative of the Iron Mountain Railroad here in conference for some days with the commission at that time?

A. Yes, sir, all the railroads were represented at the time.

Q. What was your information at the time, arising from your connection with the Freight Department of the Iron Mountain Railroad, as to the amount of the total reduction that would result from the schedules adopted by the Commission below the former rates?

A. It was a reduction, and it was protested against by all the railroads, but I can't say that I ever did make any figures on what the average reduction was at that time?

2125 Q. Do you think the average reduction would amount to as much as 20%?

A. I expect it was fully that much; when I say that, I mean it was a reduction in the rate.

Q. The schedule contained the provision also, didn't it, that where a class rate, carload and less than car loads, and commodities, in effect from jobbing centers to local points, and in effect between jobbing points and other points within the state were lower than the rates prescribed by the commission tariff that such lower rates should govern?

A. Yes, sir.

Q. There is a provision then, providing that the rates prescribed by the commission should not be lower than the lowest rate that was in effect at the time the commission rates were put in effect?

A. There rates should not be higher.

Q. That is what I mean; I will call your attention to page 14, of

Standard Freight Distance Tariff, which was adopted April 10, 1900, and ask you to read the regulation in that respect?

A. There is one of those tariffs that did not go into effect; I think the first one they got out; they subsequently issued another; which clause is it?

Q. That in heavy type.

A. I just answered that.

Q. Just read it into the record.

A. When the class rate, carloads and less carloads, commodities, carloads and less carloads, now in effect from jobbing centers
2126 to local points and between jobbing points and other points, within the state, are lower than the rates prescribed in this tariff, such lower rates shall govern. That rule was subsequently withdrawn, I think; I don't think it was in the last tariff.

Q. What tariff do you refer to as the last?

A. No. 3; I am not positive, but I think they did take that out.

Q. No. 3 was adopted in 1908, wasn't it?

A. Yes, sir.

Q. Eight years after the railroad tariffs?

A. I couldn't say how long that rule was in there, but my recollection is that the railroads eventually got them to withdraw it.

Q. They had gone a good ways from the old railroad tariffs when #3 was put in effect?

A. Yes, but there was No. 2; I think that was issued in 1905.

Q. Now, were there any railroad tariffs in effect at the time the commission's schedule was adopted, lower than those that are recited in the quotation you have just read from the 1st Standard Distance Tariff?

A. Yes, I think they found a few rates.

Q. What I want to understand is this, aren't the rates that are referred to in the extract that you read into the record a moment ago, from the Standard Distance Tariff, of 1908, supposed to represent the lowest rates that were in force, prior to the time the commission tariff book effect?

2127 A. You mean on jobbing rates?

Q. Yes.

A. Yes, there were some a little lower.

Q. What do you refer to?

A. Jobbing rates.

2128 Q. Well the point I am asking you about is this: if the rates you gave in that abstract were not the lowest before the Commission tariff was put into effect?

A. Oh, certainly, yes.

Q. I believe you stated that the Memphis rate was based on the state rate did you not?

A. Yes, sir.

Q. And the rates from St. Louis and New Orleans and other large jobbing centers which ship into this state were based on the Memphis rate, with the differential?

A. Well, yes. Didn't disturb the rates at common points. It only affected rates at local points, practically. This basis out of Memphis

was predicated with the figures on this tariff, on the distance, until they got to a point where they attempted to maintain the distance between St. Louis and Little Rock, I mean St. Louis and Memphis just the same as to Little Rock.

Q. Let me see if I understand what you mean by common point. You say there is a similarity between the Memphis rate and the state rate. Now, what do you mean by a common point?

A. I mean jobbing centers—common points—as at a junction.

Q. I want to ask you how rates are adjusted with reference to how rates at jobbing points—trading centers—in this state—how rates are adjusted. What are the considerations that enter into the adjustment of interstate rates?

A. Well, do you mean Mississippi rates?

Q. Well, take Memphis. You have taken that as a point upon which rates are built up upon differentials. Upon what distance are jobbing rates allowed? What is the object of it?

2129 A. Well, the basis that has been used has been used for a number of years for making rates from the Mississippi River across to Little Rock and it has not been changed—the basis for it—The rates have been changed. But the real basis is between points where one governs the other. They have not been changed

Q. What is that basis?

A. Well, the rate from St. Louis to Little Rock on one class is a dollar a hundred and from Memphis to Little Rock it is 70 cents. That makes a difference of 30 cents. That is called a differential. * * * That goes on down. I have a memorandum of the figures making these rates. The- were fixed along together. I don't think the railroad people denied them. They are still using them And they have no connection with the rates that are made out in Memphis, protected on the Commission's tariff. They don't follow it at all.

Q. Now, let me see if I understand you. What is the basis of the common rate from Memphis to Plumerville?

A. Well, it is practically the mileage scale, plus——

Q. Well, what?

A. Well, I haven't the tariff before me. Don't understand me to say though that it is the actual mileage, but it is the basis for the rate.

Q. Does that—Does the rate from Memphis to Little Rock enter into the rate from Memphis to Plumerville?

2130 A. No, sir.

Q. Well, let's estimate that the rate from Memphis to Little Rock on a commodity is thirty cents per hundred pounds——

A. Memphis to Little Rock?

Q. Yes. Now, what is the rate to Plumerville?

A. That would depend on the distance.

Q. Would the rate from Memphis to Little Rock and the rate from Little Rock to Plumerville enter into it in any way?

A. No, sir.

Q. How would a merchant in Memphis who applied to a railroad for a rate from Memphis to Plumerville,—how would a representative of the railroad,—on what basis would he figure it?

A. Why, he has a tariff with the rates from Memphis to Plumerville.

Q. Now, is there not some system by which the local jobbing centers in this state are protected against direct shipment from other territories; that is, jobbing centers outside this state?

A. Very little. As long as they make through rates as they do now there is practically no protection.

Q. Can a Memphis merchant—I mean, can a merchant of Plumerville get the same rate, the same rate upon the same ratio, that a merchant of Little Rock can get?

A. No, the rates are not made upon the same basis; that is, the same principle.

2131 Q. Now, are not the common points you spoke of in your answer in which you say the Memphis rates are adjusted with reference to the Commission rates, so adjusted in order to enable local jobbing centers to compete with these foreign jobbing centers?

A. Well, I think they try to do that but they don't always accomplish it.

Q. That is the theory upon which the rates are built up, is it not?

A. I think so. I would like to get clear in your mind, Colonel, about the basis of this rate out of Memphis before the Commission tariff was in effect. The rates out of Memphis were made on a different scale. Now then, they claim they have to make these rates beyond us on a mileage scale,—some of them, the Iron Mountain, as far as Little Rock, fifty miles beyond us, because of the mileage scale—Memphis being on the bank of the Mississippi River.

Q. Texarkana, in Arkansas, is a common point, is it not with reference to Memphis?

A. Yes, sir.

Q. If a merchant wants to make a consignment from Memphis to Texas how does the rate apply on that?

A. Well that rate is, when they go through Texarkana the rate for northern Texas.

Q. I am not talking about Texas at all?

A. Well, I am telling you they apply on it.

2132 Q. Explain what the rate of northern Texas has to do with it? I am ignorant about these things and am trying to get the information?

A. Well the rate through Texarkana is kept sufficiently high to prevent the reduction of the rates in Texas.

Q. In what way is that result brought about?

A. Arbitrarily I suppose.

Q. Is there any connection between the intrastate in Arkansas and the Memphis rate to Texarkana?

A. Well, there is some——

Q. Well, do the commission rates from Memphis fix the rates to common points in this State?

A. No, I think not.

Q. Well, is the rate to Little Rock, and other common points, I mean from Memphis to Little Rock, affected by the state rates?

A. Well they never have changed the basis, I don't think, that the state commission made.

Q. Well, you stated awhile ago that Memphis was practically west of the Mississippi River?

A. In making certain routes.

Q. In making certain points?

A. No, I didn't say that. I said lone points—points that are not competitive.

Q. Then I will ask you if the rates from Memphis into Little Rock are not the same, or less than the commission rates for the same distance?

A. Well, some of them are on some commodities.

2133 Q. Is it not necessary that be the case in order to promote jobbing points in this State?

A. I think so.

Q. If that were not the case it wouldn't be a jobbing point, would it?

A. It depends upon the practice.

Q. Does some relation exist with regard to rates from Memphis to Texarkana?

A. No, I think the basis they use at Texarkana now, was fixed most of it, before the Commission tariff had effect.

Q. What is that basis?

A. That is arrived at arbitrarily like other junction points. There are some rates at Texarkana, as I understand it, one or two commodities, that were made on the maximum mileage.

Q. What are those commodities?

A. I think sugar was one.

Q. Where from?

A. New Orleans. That is the only one I know of that amounted to anything.

Q. Did the tariff fixed on sugar—maximum tariff—influence the rates from New Orleans to Texarkana?

A. Yes, sir.

Q. In what way?

A. Why they reduced them.

Q. In what manner? I mean, what brought about the reduction?

A. Well, what brought it about was they found Texarkana shippers bringing their sugar into Helena and re-shipping it.

2134 Q. That is not answering the question. I asked you how the maximum rate on sugar prescribed by the Commission affected the rate from New Orleans to Texarkana?

A. The rate from New Orleans to Helena was 12 cents and the maximum rate in the Commission tariff was 13. That made a possible combination of 25 cents—no, 23—no, 25 cents, and the railroads had a rate of 27 cents from New Orleans, so they had to reduce it to meet this.

Q. That was a combination of the local rates in Arkansas and the interstate rate to Helena?

A. Yes, sir.

Q. Would that effect a combination of locals?

A. Well, yes, it would form a combination of locals, one state and the other interstate.

Q. Mr. Bragg, could the railroads maintain a rate from Memphis to Little Rock, plus the local rate from Little Rock to Texarkana?

A. I don't think they would attempt it.

Q. Well, could they do it? I mean, in their business.

A. Oh no, certainly not.

Q. So the rate then from Memphis to Texarkana could not exceed then practically the rate from Memphis to Little Rock, plus the rate from Little Rock to Texarkana?

A. Well, there was no such condition.

Q. Well, let me illustrate. There was a suit brought against the Gulf Colorado & Santa Fe in regard to a shipment from some point in Nebraska or Kansas which was billed to Texarkana. The
2135 shipper re-billed it to some point in Texas and a controversy arose about the rate. There was a difference in the interstate rate from the point of shipment to the destination in Texas and the sum of the two rates to that point in Texas plus the local rate to Texarkana. Now, the party had a right to re-ship it and get the benefit from the Commission rates?

A. Yes, sir.

Q. Now, is that not practical in every instance?

A. No, it is not practical everywhere. If there is such a combination prevails though, he can do it.

Q. Well, if you had a large consignment from St. Louis to Texarkana or from Memphis to Texarkana, and you could rebill it from Little Rock to Texarkana at a lesser rate, you would do it, wouldn't you?

A. Well, I would have to pay the freight and re-bill the car.

Q. Well, I say, doesn't that force the railroads to take into consideration the sum of these local rates in fixing rates of that sort?

A. Well, they usually do.

Q. Now, for a shipment from some point in Louisiana to a point in Texas, via Texarkana, the same condition would prevail, would it not, as in that case I have illustrated against the Gulf Colorado & Santa Fe?

A. Yes, there are some rates in the Texarkana combination, I presume can be handled that way, but I don't know that they——

Q. I was only asking you if the Texarkana combination does not influence the interstate rates say to Marshall and other points in Northern Texas?

2136 A. Well, there might be a few points right in the vicinity of Texarkana, but as a rule, there is an interstate rate that covers the whole state of Texas.

Q. I know, but you are not answering my question. Doesn't it influence the interstate rate to Marshall and other points?

A. I don't think so.

Q. Are you familiar with the conditions?

A. I used to be.

Q. And you say that is not the case?

A. I don't think so.

Q. Are you familiar with tariff #1 of the Southwestern Tariff Committee?

A. Yes, sir.

Q. Is there not a section of Northern Texas in that tariff that is controlled by the combination?

A. I tried to answer your question on that a while ago and you wouldn't let me. I said there were a few points in the vicinity of Texarkana,—Atlanta, Marshall, Weston and a few other points—unimportant some of them—that they do make less than the Texas rate.

Q. Have you a copy of that tariff?

A. Sure. Yes, sir.

Q. I wish you would bring it up this afternoon.

A. I would like to answer a question that you asked me about this Texarkana rate.

Q. All right.

A. To show that it was not controlled by the State Commission tariff altogther. When the maximum rate #3 was 82 cents
2137 first-class, the first-class from Memphis to Texarkana was a dollar.

Q. Now, what was the maximum rate of 85 cents you spoke of?

A. 82, from anywhere over the state by a single line. So the Texarkana rate could not be governed entirely by the #3 tariff.

Q. Now, you said, as I understand it, at the time the maximum rate in Arkansas was 82 cents the rate from Memphis to Texarkana was——

A. A dollar. I know that is right.

Q. What was the sum of the rates Memphis to Little Rock, plus the rates from Little Rock to Texarkana at that time?

A. Oh, they would be about $1.25, something like that.

Q. Was it practicable for railroads, in view of commercial conditions and other conditions that affected transportation, to put in a rate that would exceed the sum of those two rates that I asked about formerly?

A. Well, it could be done.

Q. I know it could be done. Many absurd things could. But, in practice, was it done?

A. Hardly ever.

Q. Could railroads maintain a system by which they could operate under rates between two given points that were greater than the combination rate from the initial point to the initial point of the combination rate to the destination?

A. They don't do that.

Q. Would shippers assume that without consideration?

A. They don't do it.

2138 Q. That is what I want to know. They don't do it. But on the other hand they make their rates very close together——

A. It is impossible under the tariff existing today to do that.

Q. You say they make the rates very close together?

A. You couldn't ship anything into Little Rock and ship it out of here except by the through rate.

Q. Why is that?

A. Because, as I told you before, they protect the rate by this court tariff.

Q. But upon the Commission tariff before the court tariff was adopted?

A. If they reduce the rate of Memphis to Arkadelphia, in a St. Louis shipment, they maintain the difference between St. Louis and Memphis by reducing the rate from St. Louis to that point. There is no rate out of St. Louis.

Q. And by that method they observe a parity of rates?

A. Yes, sir; between St. Louis, Memphis and Texarkana, or Arkadelphia.

Q. Now, if there were a change made in the rate between Texarkana, Hope or Fulton a corresponding change would be made in the rate between St. Louis and Memphis?

A. Certainly, they would have to come to that.

Q. Now, would that be true between St. Louis and Texarkana?

A. Yes, with a little difference.

Q. What would be the difference?

A. Well, I don't know. I have never considered it.

Q. Well, to go back to the matter I called your attention to a while ago, I will ask you again, with reference to the actual,
2139 practical working of transportation rates, if a change were made by which there was a material reduction in the rates from, say, St. Louis to Hope and no change made in the Texarkana rate, as a result of which the rate from St. Louis to Texarkana would be considerably higher, would that sort of arrangement work out?

A. Well, the Iron Mountain has a rate to Fulton, nine miles north of Texarkana, that is higher than the Texarkana rate.

Q. You mean from St. Louis to Fulton?

A. Yes, sir.

Q. How does that compare with the rate from St. Louis to Little Rock plus the rate from Little Rock to Fulton?

A. Well, there are no combinations from Little Rock, no, from St. Louis to Little Rock that can beat the through rate.

Q. I want to ask you if that statement you made a while ago as to the effect of reduction does not apply generally in the adjustment of rates?

A. Yes, sir. You can hardly reduce from one point without affecting another, or advance the rate from one point without affecting another.

Q. Are you familiar with the rate situation in this state generally?

A. Yes, sir; I think so.

Q. Now do you know what is the rule,—We will say that the Kansas City Southern has, as to preserving the relation between rates as to intermediate places, say Hope and Texarkana,—whether they would carry goods cheaper to Hope than to Texarkana?

2140 A. Well, the Kansas City Southern has the reputation of keeping the Texarkana rate in line with all points. In fact, the time that this rate—on sugar, I mean—was in effect only over

the Kansas City Southern. I think that is the line that published the combination.

Q. If that is true on the Kansas City Southern or any other line or road on rates to intermediate points—between Texarkana and other points—would it not force railroads to regard the Commission rates to points in northern Texas?

A. Well, it doesn't force them to do it, but they usually do.

Q. They do it, however?

A. Yes, sir.

Q. Is that not a practice that prevails pretty generally in the adjustment of railroad rates?

A. That prevails at common points.

Q. What effect would the reduction in state rates between given points, to what extent would it impair or destroy the parity as between state rates and interstate rates—what effect would it have upon the interstate rate in the same territory?

A. Do you mean a reduction in the state rate?

Q. Yes.

A. Why, it would, of course, reduce the interstate rate; that is, if they followed the line they have been following ever since the Commission went into effect.

Q. Well, that is what I speak of.

A. Yes, sir.

2141 Q. Do you know how rates on grain from Kansas City to points south of Pine Bluff are fixed?

A. In Arkansas?

Q. Yes.

A. I haven't a grain tariff with me, but I believe south of Pine Bluff, I think the rate is the same at Pine Bluff.

Q. I will ask you if it is not the rate from Kansas City to Pine Bluff, plus the local rate out of Pine Bluff to the destination, take Rison for instance?

A. That is on the Cotton Belt; they make those rates on a certain fixed differential over the Pine Bluff rate, on through tariffs.

Q. The question I want to ask you, take Rison for instance, that is a station on the Cotton Belt line?

A. Yes.

Q. If the rate to that point is not the rate between Kansas City and Pine Bluff, plus the local from Pine Bluff to Rison?

A. You mean this local court tariff.

Q. Whatever the local is—take the commission tariff.

A. That may be true; I presume they make a rate that way, if the local was less than the fixed differential which they usually use in making those through grain rates.

Q. Isn't that true all along on the Cotton Belt line?

A. I guess it is; I don't know; it is not true on the Iron Mountain though.

Q. Have you produced the Western Committee Tariff #1, that I asked you for this morning?

A. That is No. 1-B; I think that is the one that is in

2142 effect now.

Q. Will you take the tariff and state what points in North-

ern Texas the rate described by the Texarkana combination reaches, that I asked you about this morning?

A. I could not tell unless I had the Texas Commission tariff; I do not know whether this is a combination of the locals or not; there is a difference here to some of those near-by points on the commodities, but very little on the classes.

Q. What are the points?

A. Atlanta, Jefferson and Marshall; the difference in the class rate is only two cents between common points.

Q. I will take the commodity rates, you say Atlanta, Jefferson, Marshall and Waskon and points taking the same rates as those, those are large business centers?

A. I wouldn't consider them so.

Q. Aren't Jefferson and Marshall?

A. They are pretty good little towns; they are not wholesale towns.

Q. What are the commodity rates; is there not a large list of commodities there that take that rate?

A. Yes, sir.

Q. How many sheets of that tariff do they cover?

A. They don't cover very many, about six or seven pages; there is a difference between those commodity rates, and the common point, Texas common point rates.

Q. What is the difference?

A. On agricultural implements, the first item I see here,
2143 is 12 cents to Atlanta, and there is only four cents on Jefferson; 1 cent on Marshall, and Waskon, that is the same; the greatest difference appears to be at Atlanta, and points common therewith.

Q. What are the relative distance of those places; the difference grows less as the distance increases?

A. I think Atlanta is the nearest point to Texarkana.

Q. Doesn't the difference grow less as the distance increases?

A. Yes.

Q. Doesn't that show it is based on the Texarkana combination?

A. It might be that, or it might be the grading that led up to the common point rate, that might be the basis for it.

Q. What do you mean by the common point rate?

A. Zone rate; it applies all over Texas.

Q. Isn't that a different rate from the zone rate?

A. Yes, sir.

Q. And that conforms more nearly to the Texarkana combinations?

A. I don't know whether that is based on Texarkana combinations or not; there must be some basis, but I don't know whether it is the commission tariff that applies, plus the Texarkana rate or not; I would have to check a few to give you that information; it would have to be a pretty low rate from Texarkana to Atlanta; only eleven cents, and I hardly think the commission rate carries as low a rate as that.

Q. These schedules we are talking about, represent a pretty large number of commodities, don't they?

A. Yes.

2144 Q. And a heavy traffic movement?

A. I expect there are some items in there that there is a pretty heavy traffic on.

Q. Did you say you could figure out the rates and tell me definitely whether it is the Texarkana combination or not?

A. Certainly.

Q. Will you do that?

A. It will take me several hours.

Q. Will you do it and furnish me the information later?

A. Yes; if it is the Texarkana combination, I can give it to you by making the figures.

Q. You would have to have the Texas tariff to base that on?

A. I have that Texas Commission tariff; it does not stand to reason that it would be a combination though; you mean you want me to take the rates from Texarkana on those commodities and add the commission tariff and see the sums of the two?

Q. Yes. How do the rates to common points which you have referred to in your testimony in this case, compare with the local rates which I suppose would be governed by distance tariffs?

A. The mileage?

Q. Yes, which are the lower?

A. Some of the common points are based—take Little Rock for instance, the rates are somewhat higher than the court tariff.

Q. I am not speaking about the court tariff.

A. Well the commission then.

2145 Q. I mean usually, as a rule, how do the rates at common points compare with mileage rates?

A. They never have considered them in the making of rates; those through rates to the junction of common points have not been based on the intrastate rate in hardly any instance.

Q. When I say common points, I mean jobbing centers, like Little Rock.

A. Yes.

Q. What I want to get at is your knowledge, if you have any knowledge, as to which is usually as a rule the lower rate, that is the jobbing point or the mileage rate?

A. I would like to have a little time, I would have to look a little bit before I can answer that question.

Q. I want to direct my question to a period covering along about when the Commission tariff was in force, from 1900 to 1906 or 1907; to give you a sample of what I mean, take wire nails to Little Rock; how do the rates on that commodity from Memphis to Little Rock, which is the common point, compare with the mileage scale.

A. Practically the same, except that this tariff extends the rate for distances of 150 miles; the rate in this tariff, in this court tariff.

Q. I am not speaking of the court tariff.

A. This is not the court tariff; this is #3, the tariff that was enjoined, the rate in that tariff between Memphis and Little Rock is the

same as the rate today from Memphis to Little Rock, that is in the carload rate.

Q. What was the rate from Memphis to Little Rock on wire nails under this distance tariff #2 of the State Commission?

2146 A. Well, the rates were not made on this tariff #2, at the time the first tariff was issued.

Q. I perhaps put that question wrong; what was the mileage scale on that commodity, for a distance of 133 miles, under distance tariff #2?

A. I have #3, I don't think there was any change in it.

Q. What was #3?

A. 13 cents.

Q. What was it from 1900 to 1906, the rate from Memphis to Little Rock?

A. 10 cents.

Q. That is a difference of 3 cents?

A. Yes, sir.

Q. That illustrates the information that I want, as to how the scale ran; how did it run usually, which was the higher rate usually, the interstate rates to common points, or the intrastate mileage scale?

A. Some of the interstate rates were lower and some were higher.

Q. On what commodities were the interstate rates to common points higher than the intrastate mileage rates, rates on the mileage scale?

A. The first commodity in here is produce; the interstate rate at the time this was in effect—was issued, from Memphis to Little Rock, was 16 cents. This is 12,—the mileage scale.

Q. How was it from St. Louis?

2147 A. St. Louis was the differential higher, about eight cents, six cents may be.

Q. On merchandise what was the difference?

A. The rates from St. Louis were not predicated on this tariff at all.

Q. On Memphis how was it?

A. I just say there was a difference of four cents a hundred; the interstate rate was that much higher.

Q. You stated this morning, in speaking of jobbing rates, that some very low rates were put in; I understood you to say, for the purpose of building up trade centers?

A. That was the primary object of the railroad people.

Q. What was the policy of the state commission, in fixing their rates?

A. I am sure I couldn't tell you.

Mr. HILL:

Q. You were not a member were you?

A. No.

Mr. MOORE:

Q. You had occasion to give a good deal of attention to the commission's rates during that period?

A. Yes, sir.

Q. From your experience and judgment, growing out of your occupation, what would you say in answer to that question, I mean as to the effect of the commission rates?

A. I stated this morning, it had the effect of reducing the intrastate rates, incidentally, the interstate.

Q. In what way did it reduce the interstate rates?

2148 A. My reason of the contract they had at Memphis.

Q. What was that contract?

A. That contract was that for a certain consideration, that is the vacation of streets and alleys, they agreed to forever maintain the same rates from Bridge Junction or West Memphis, from Memphis proper to points in Arkansas.

Q. The Memphis rate was made the basis through the medium of a differential, of the interstate rates from St. Louis and New Orleans, and other large jobbing centers, into Arkansas?

A. Yes, sir, that is true.

Q. Speaking of it broadly, in the aggregate, I will ask you if the interstate rates to common points from jobbing centers in Arkansas, were not, during the period that the Commission rates were in force, lower than the mileage rates and the rates upon the mileage scale?

A. Not altogether. Some of them were higher and some were lower.

Q. I mean in the aggregate.

A. In the aggregate, they may have been about the same.

Q. I asked you awhile ago to name some of the commodities in which the interstate rates to common points were higher, and you mentioned produce, I wish you would mention any others that you can?

A. Bagging and ties; my recollection is there was a difference of about 2 cents between Memphis and Little Rock.

Q. Which was the higher?

A. The interstate rate.

Q. What else?

2149 A. On canned goods, the state rate was higher than the interstate rate.

Q. It is those cases in which the interstate rate was the higher that I want you to state.

A. There are very few of those; grain and grain products are not considered in this tariff at all.

Mr. HILL:

Q. You didn't consider that because the grain and grain products moved under interstate rates?

A. Yes, sir, as I have stated before, the rate on iron and steel articles was higher in this tariff than the interstate rate, 2 cents a hundred.

Mr. MOORE:

Q. Have you found any other commodity in which the rate was higher?

A. There was a reduction on petroleum; that is, this tariff was lower than the interstate; I am not clear as to just what the difference was; there was a difference.

Q. That is the third; is there any other?

A. I think not; there were a good many carried in the common point tariff that are not in this.

Q. Have you examined the supplemental tariff put out by the Commission on petroleum; I think they raised that?

A. Yes.

Q. Are you speaking from the supplement?

A. I am speaking of this tariff made in 1908; I think that carried all the changes; there were some less than carload rates made in this tariff, which are not carried in the other.

2150 Q. Didn't the Commission in reality very materially lower the rate on petroleum products, after that rate you have before you?

A. I believe they did; I take it this was the rate that was in effect at the time the injunction proceeding was had, because it is #3, dated 1908; I presume that is the lowest rate and the last rate.

Q. State what the relative rates were?

A. That I can't say; this may be a rate of 13 cents on the mileage scale for the distance between Little Rock and Memphis; there is a difference there of about three or four cents.

Mr. HILL:

Q. Which is the highest?

A. The interstate rate was the higher.

Mr. MOORE:

Q. Just state what each rate was, what the interstate rate was, and what the state rate was?

A. I haven't got the Memphis tariff: (After looking at tariff handed him) It makes a difference of 2½ cents a hundred; it is higher on interstate than state for an equal distance.

Q. What do you say was the rate from Memphis and the state rate on wire nails?

A. Prior to 1907, the rate on nails and wire from Memphis to Little Rock was 10 cents.

Q. What was it for the same distance?

A. It was 13.

Q. What was it from St. Louis?

2151 A. It was 20; no, it was 18; that rate was advanced 5 cents in 1907, the interstate rate.

Q. Prior to 1907, what was it?

A. It was 18 cents from St. Louis and 10 cents from Memphis.

Q. That was prior to the change made in February, 1907?

A. Yes, sir.

Q. What was the change in 1907?

A. 5 cents a hundred increase.

Q. From which point?

A. Both points.

Q. Aren't you mistaken about it being the same from both points, wasn't it 3 cents from Memphis and 5 from St. Louis?

A. Yes, that is right; it was 3 cents from Memphis and 5 from St. Louis; it was 18 cents to St. Louis and they raised it to 23; it was ten to Memphis and they advanced it to 13.

Q. Did you have any connection or participate in any way, in the increase in interstate rates in February, 1907, further than to apply the rates?

A. I was at that time, with the freight bureau.

Q. You have no connection with that rate?

A. Not with the making of it.

Q. You don't know the reasons that the traffic men who participated in making that, had for that raise?

A. Yes.

Q. What was it?

A. They said they needed the money.

Q. That the rates were too low?

A. They didn't say that; they said that they had to in-
2152 crease their rates.

Q. Did they tell you why they had to increase them?

A. They said they had to have more revenue.

Q. Didn't they also say to you that the change ought to be made for the purpose of adjusting the interstate rates to the state rates for equal distances?

A. There was nothing said about that at all.

Q. Who did you confer with?

A. There was a representative of the Cotton Belt and Iron Mountain——

Q. Give their names?

A. Mr. Watson was present and Mr. Stith of the Iron Mountain and Mr. Farrell, I believe, of the Cotton Belt, and Mr. Park—about the same officials that are here with the roads now were there—Mr. Johnson of the Rock Island was there.

Q. You stated there was a raise of about 15% in inter-state rates at that time?

A. Yes, sir.

Q. Do you state that as a matter of fact or simply as your idea?

A. I made the figures; I know what it was; the average was about 15 or 16%; some were 20, some 25, and some 5; the average was about 15%.

Q. What class of commodities was the highest rate made on?

A. It covered all classes.

Q. The highest did not cover all classes did it?

A. I say it covered all commodities.

Q. I asked you on what particular commodities the highest
2153 rate was made?

A. They raised it on everything.

Q. You said it ran from 5 to 25%; state what that was in figures?

A. 5 cents a hundred.

Q. What was it from Memphis?

A. Memphis was increased about the same proportion.

Q. What I asked you was what was the original and what was the larger rate?

A. It was first 10, and they raised it to 13, and then some of the heavier groceries, sugar, I think was advanced 10%—2 cents a hundred; sugar and molasses; there were other increases aside from the rates, by increasing the weights.

Q. I believe you stated this morning that the commission tariff cancelled prior tariffs that had been put in force by the railroads?

A. Yes, intrastate tariffs; I think the railroads voluntarily cancelled all these rates out.

Q. How did the commission rates compare with the special rates to jobbing centers on the special commodities such as you mentioned this morning, coal, and grain and commodities of that sort,—lumber?

A. That was all practically interstate business; the cotton seed rate was reduced in some instances, and in some increased, by reason of this tariff.

Q. How was it on coal?

A. Well, the coal rates were reduced some.

Q. Can you tell me how many commodities, if there were any at all, upon which the rates were not reduced by the com-
2154 mission tariff, below the tariffs that had theretofore been in force?

A. I could not.

Q. I will ask you, if as a whole, the rates were not reduced on all commodities?

A. Yes, in less than carloads they were, not in carloads, but in less than carloads they were reduced.

Q. And didn't the commission rates practically supersede the previously existing special rates, by reason of the fact that the commission rates were the lower, and it necessarily operated to do away with the prior rates?

A. I don't remember any jobbing tariffs that were kept in effect, or special tariffs that were kept in effect, very long after this tariff went in.

Q. And the reason of that was that the Commission tariff reduced the rates wasn't it?

A. As a rule it did; that is, understand me now when I say it did, it is on the less than carload commodities; carloads were, in many instances, higher than the railroad rates.

Q. Were the special rates put in force by the railroads regarded by you as high or low rates?

A. During the period that they were made, it was thought necessary to make them; they were largely experimental.

Q. In what sense?

A. The railroads wanted to take care of the business, but the traffic from the jobbing centers, like a great many other rates, it was pretty hard to figure out, just what you wanted to do, and they had to experiment with it.

2155 Q. Isn't it a fact that many of those rates were made for the purpose of building up and developing trade centers of the state, and weren't they made exceptionally low for that reason?

A. That was the object unquestionably.

Q. And to facilitate that object, the rates were made very low in many instances?

A. I don't think that they were any too low at that time.

Q. When you say you don't think they were any too low, you mean in reference to commercial conditions of the country?

A. Yes, sir, as they existed at that time.

Q. And when you say that, you speak of the fact that the country was new and needed developing?

A. Yes, sir, sparsely settled, and the roads favored the outside points until the time that these jobbing centers—until the merchants began opening up wholesale houses in the state; that is customary everywhere.

Q. Then it became their policy to build up local trading centers?

A. Yes, sir.

Q. Did you regard at the time this first distance tariff was put in, in 1900, did you regard the rates established by the commission as reasonable and fair, and just to the railroad?

A. I was working for a railroad at that time.

Q. I am asking you what was your view about that?

Mr. HILL: I think he has answered that; I don't think that is a fair question, Judge Dooley.

2156 Mr. MOORE:

Q. You have already testified, I think, that you didn't approve of the mileage scale adopted by the commission?

A. I don't think it is a proper basis.

Q. Wasn't that the foundation of the fabric of rates that the Commission built up?

A. When I say that, I don't think it should be the basis for making through rates for long distances, or interstate rates; it is absolutely necessary to have a mileage scale somewhere, and in some way, because you cannot cover every point with terminal tariffs.

Q. What you objected to in the commission schedule was the generality of the mileage scale they adopted?

A. Yes, sir.

Q. If that was faulty, it affected the entire fabric they built upon it, didn't it?

A. It affected all rates predicated on it, of course; I would like to qualify that, by saying that I think some rates that followed the commission rates were unnecessary.

Q. Do you know whether any proposition was ever made to the Railroad Commission to increase the rates?

A. Informally, yes, sir.

Q. What was done in that respect?

A. I was one of the parties that made a suggestion to them.

Q. When was that?

A. That was when Judge Hudgins was chairman of the commission; I don't remember the date.

Q. What was the suggestion, please.

2157 Mr. HILL: You are making this witness your witness now.

Mr. MOORE: That is all right, judge.

(WITNESS:) The gentleman and myself prepared a tariff, a mileage tariff, made on what we thought,—and in fact he was a scientific tariff man,—was on a broader basis; that is, not so much as to figures, but it was lined up better, more like a tariff; it made some reductions, and it made some advances. Judge Hudgins said that the Commission would not entertain it if it meant an increase in these rates; it was never presented to the commission except informally.

Q. Judge Hudgins was Chairman of the Commission at that time?

A. Yes; he said they didn't care to entertain anything that would change their tariff.

Q. By whom is this "Southwestern Lines Tariff" prepared; in order to make it compare with the language used heretofore, the tariff prepared by the Southwestern Committee; who is that committee, of whom is it composed?

A. All of the Southwestern railroads.

Q. You had no connection with that committee?

A. Not since I left the railroad.

Q. Who prepared the schedule of rates put in by the railroad companies, how are they prepared, and who does it?

A. Unless they have changed the method, the railroad designates a representative to attend these meetings; they meet once
2158 a month or oftener, if necessary, and they check out these rates and instruct the chairman to issue them.

Q. What is done then?

A. He issues them.

Q. Who issues them?

A. They are issued in this tariff.

Q. That tariff is then put in the hands of the representative who applied them, the traffic manager?

A. Yes, sir.

Q. When you were division freight agent, did you have any connection with the meeting of the committee and the making of the rates, or was it your duty to apply them to the business that was in your jurisdiction?

A. It was my duty to apply them; I have attended some of these meetings.

Q. What meetings did you attend?

A. Several in St. Louis, when Mr. Cale was chairman.

Q. How long ago was that?

A. Six or seven years.

Q. Were those general meet[illegible]s of the representatives of different roads, or was it a meeting of the officials of the Iron Mountain road?

A. All the Southwestern lines were represented.

Q. Were the differentials that you have referred to in this case, fixed at any of the meetings you ever attended?

A. Yes, but it has been so long ago I have almost forgotten it; those differentials were fixed at a meeting in the Southern Hotel, twenty years ago; I don't think they have ever been
2159 changed; if they have, it is not a very material change; there has been no radical change in any of them.

Q. Are you familiar with the proceedings and work of the Western Classification committee?

A. Only in a general way; I have attended one or two meetings, not as a railroad representative, but as a shipper.

Q. When did you attend those meetings?

A. I attended two meetings, both at Hot Springs.

Q. What year?

A. The year they met there, I think it was in 1906.

Q. For what purpose did you attend the meeting?

A. I wanted a reduction in several commodities in the classification.

Q. Why did you want that?

A. Because I felt that the classification on certain articles was unjust.

Q. I wish you would explain just in a few words, what the complaint was, and what it was predicated upon.

A. I can't mention the articles now, but I think some were iron and steel articles, and some other commodities, probably grocery commodities; you have to file an application there, setting forth the reasons and all about it, and then they give you a hearing if you are lucky enough to get in.

Q. Did the classification affect the rates upon the commodities you were complaining about?

A. Yes, indeed; the classification affects every rate, unless it is covered by a special commodity that takes it out of the classi-
2160 fication.

Q. Does the classification prescribed by that committee obtain in the classification made by the State Commission?

A. Largely so; they have an exception to it which is probably in the tariff.

Q. I believe you said you did not present your scheme for changing the rates to the Commission, because Judge Hudgins, the chairman, told you that it would not be considered?

A. We just discussed it with him about five minutes, and he said he didn't care to take it up, or take up any question about changing the rates.

Q. That was the reason you didn't press it any further?

A. Yes; one of the railroads objected to it; we submitted it to one of the lines and he wouldn't give us any help on it.

Q. You spoke something this morning in reference to the causes that governed in fixing rates; are railroads different in that respect from other industries, isn't it necessary that they have some knowledge of the cost of the service they render, in order that they might

be able to fix their compensation, so as to have an assurance of earning a profit on their services and investment?

A. Yes, it should be that way, and I presume, in a general way, they try to do that.

Q. Did you ever know of a business, large or small, that was conducted successfully, in which the output of the business was not sold with reference to the cost of its production?

2161 A. I consider that the railroad corporations in that respect are entirely different from any other kind of business.

Q. Can any business be conducted successfully unless it sells its wares upon a basis that will enable it to make something above the cost of producing it?

A. Of course not.

Q. Isn't that true of railroads, the same as any other enterprise?

A. They are trying to make money, there is no question about that.

Q. Can they conduct their business intelligently with reference to results, unless they fix the price upon what they have to sell with some reference to the cost of producing it; isn't that true just as well with railroads as with any other industry?

A. I don't think so; I don't think they can calculate it very closely.

Q. If the cost of transportation is not an element that it is absolutely essential that railroads should consider, must they not consider it if they conduct their business successfully?

A. Of course, they must do that.

Q. You do not mean to say that rates are fixed without any reference at all to the cost of service?

A. About half of them are.

Q. How is it with the other half?

A. I don't see how they can figure a rate at all, on the cost of——

Q. Let me ask you, I believe you said awhile ago that the

2162 rates depended upon the classification; does the element of cost enter into the consideration of those persons who are charged with the duty of making the classification?

A. No, sir; in a general way, they make these classifications—they are inconsistent; they will classify a commodity, one of the very cheapest commodities, perhaps, which costs the smallest sum to handle, they will put it away up in a high rate.

Q. I will ask you, the classification given say to iron, with reference to the rate, that is fixed upon it, how does it compare with the classification of baskets?

A. There is no comparison in those things.

Q. What is the difference?

A. One is low and the other is high.

Q. Why do they make that difference?

A. They make that difference on account of—they always figure that baskets and bulky stuff, they figure that according to the space it occupies.

Q. The space that an article occupies is one element that is considered?

A. That is one,—it must be.

Q. Does the weight enter into it, is that an element that is considered at all, in classifying it?

A. I don't think so.

Q. Would they put pig iron in the same class as they would feathers?

A. I don't think they would; feathers would take more room than pig iron.

2163 Q. It would not weigh so much?

A. They make the rate sufficiently high to take care of that.

Q. Does the danger of injury and the value of the articles transported have any influence at all in the classification?

A. Yes, some.

Q. Why?

A. The value of an article is sometimes considered, and sometimes it is not.

Q. Why do they consider it?

A. Sometimes they do and sometimes they do not.

Q. Why do they consider it in the cases where they do?

A. They just forgot about it, I reckon.

Q. They just consider it from forgetfulness?

A. They don't figure it at all.

Q. Take a carload of pianos, and compare that with a carload of another commodity, that would be about the same weight, but would not be worth one-tenth in value of the pianos, would they class them the same way?

A. I can illustrate that to you by stating, that a carload of pianos would not be of any greater value than a carload of axes, yet they can get the weight on the axes, but thereby get a greater amount of revenue than they would on a carload of pianos, although the rate might be the same.

Q. How do you classify them?

A. Along with other first class freight.

2164 Q. Take fragile glass, valuable and fragile glass, take glassware which is very valuable, say Dresden china and crockery, is there any difference in the classification made on account of its value and fragility.

A. Yes, they usually limited the value in the bill of lading.

Q. Why is that?

A. Because they don't want to assume the risk.

Q. I am asking you about the classification, with reference to the rate put upon it.

A. I don't say they don't consider them sometimes, but as a rule they are inconsistent; some ought to be classed higher than they are and some ought to be lower.

Q. Have you ever been present and attended a meeting of the Western Classification committee?

A. I am a shipper and not permitted to be there; they do these things in closed chambers.

Q. You don't know from your own personal knowledge, what things they consider?

A. Yes, I do, because I have been using classifications for 25 years, and I know practically how they are made, and the matters they consider, because I have had a great deal of correspondence during my service with the railroad, and a great deal since with the classification committee.

Q. Do you know Mr. Becker, chairman of the Western Classification Committee?

A. Yes, sir.

Q. Do you know how long he has been engaged in that service?

A. He is an old railroad man, traffic man.

Q. He has been for a long time in that service?

A. I don't know that he has been with the Western Classi-
2165 fication Committee very long.

Q. You don't know how long he has been there?

A. Four or five years, I think; you understand there are three classifications in this country, and none of them agree.

Q. Yes, I know, but those classifications cover different territory, don't they?

A. Yes.

Q. But don't all of them make their classifications with reference to bulky and weighty articles and value and considerations of that sort?

A. I expect they try to do that.

Q. And it is just a question of capability as to how nearly they can succeed in doing it?

A. I think a great many of those inconsistencies creep in there by reason of the fact that the people who make these classifications are utterly without experience; some of them have never been out of the City of Chicago.

Q. Isn't it a fact that the subject is one of such large dimensions that it would be very difficult to avoid making some mistakes?

A. Certainly.

Q. You wouldn't say as a general rule, that they don't make their classifications, that as a general rule, the cost of transportation doesn't enter and have its influence with them in placing articles in different classifications?

A. I think a great deal of it is guesswork.

Q. They attempt to guess with reference to the cost of
2166 transportation?

A. Yes.

Q. Your view is caused by your *option* of the experience and capability of the men engaged in the work?

A. I think Mr. Becker is a very competent man.

Q. Would you regard his views with respect?

A. Yes, but he is not infallible.

Q. He has had a better opportunity than you have had to know the theory upon which the committee acts?

A. I don't think so.

Q. Hasn't he been present at their meetings and their deliberations?

A. In a detail way, I would consider he was; I consider any of these railroad gentlemen here, who have come in contact with these classifications daily as I have, would be just as competent to pass upon the classification of an article as Mr. Becker would.

Q. Your duties as division freight agent, I believe you stated awhile ago, were to apply the rates that were issued by those authorized to make them, in the territory that was in your jurisdiction?

A. If I found that the rates that were furnished me, were out of line, or were not in keeping with the conditions I would always notify the people at headquarters.

Q. What conditions do you refer to?

A. Sometimes the tariff was issued, and after you put it in effect, you found it was not the proper rate.

Q. For what reason, what would influence you in determining that it was not a proper rate?

2167 A. The fact that it would not move the business.

Q. That would be one thing?

A. Yes.

Q. If it didn't move the business, you would report that the rate was too high perhaps?

A. Yes.

Q. Suppose it came to your knowledge that a rate that had been put in was so inadequate as to be utterly unremunerative, and it would cost more to transport an article than the rate would yield, what would you do?

A. I never had any experience along that line; if I had I would have called their attention to it.

Q. Why would you have done that?

A. Because I wouldn't want them to haul freight for nothing.

Q. You would do that in consideration of the fact that the cost of service is an element that ought to be considered in determining the rate, wouldn't you?

A. Yes, if it is possible to do such a thing.

Redirect examination.

By Mr. HILL:

Q. When you went to Judge Hudgins with the proposition to reform the tariff, did you accompany it with any statement that the railroads were losing money under the existing tariff?

A. No, there was nothing said about that; we did not make any proposition; we didn't even show him the figures. We

2168 simply mentioned the matter to him informally, asked him if he would consider a revision of that tariff.

Q. You wanted to balance the tariff better than it was balanced, wasn't that the idea principally?

A. Yes, like all tariffs, there were some inconsistencies in it; while

we did not attempt to correct all of those, we thought that it would probably have been more satisfactory.

Q. You thought you would distribute the revenue more scientifically than it was distributed under that tariff?

A. It meant an increase in some things, and a reduction in others.

Q. There was no proposition made to Judge Hudgins at that conference, that the railroads were losing money under this tariff, and should have an increase for that reason?

A. We didn't make any statement of that kind.

Q. You stated one road objected to having these changes made in the tariff, which road was that?

A. It was the Iron Mountain; Mr. W. C. Stith, at that time traffic manager. I had some correspondence with him about it, and while he said it was a move in the right direction, at the same time he said he didn't feel that he cared to take it up.

Q. You referred in answer to a question of Mr. Moore, with reference to that Memphis situation, and if I understood it correctly, it confounded two propositions that I want to get clear; I believe you stated this agreement that was made by the City of Memphis or some parties representing the city, by which
2169 the Iron Mountain got terminal facilities there, was to the effect that the Iron Mountain was to maintain local rates out of Memphis, the same as the commission rates in Arkansas?

A. Yes, whatever rate might be applied in the state, intrastate, it would be followed by a similar rate out of Memphis.

Q. In other words, as you expressed it this morning, it was making Memphis an Arkansas point?

A. Yes.

Q. What only applied to the local rate, and not to the common point rates?

A. No, sir, it only applied to the local points.

Q. Now, Mr. Moore asked those questions practically together as I understood him, and there might have been some confusion there; these arbitraries that you described, based on the Memphis rate, had nothing to do with that agreement about the rates in Memphis did they?

A. You mean these differentials?

Q. Yes.

A. No, that was a matter entirely that affected the interstate rate; it was simply adjusting the rate as between Memphis, St. Louis, New Orleans, Cairo and Kansas City.

Q. That was simply a system of arbitrary differentials that grew up all over the country, and these were the ones affecting this territory?

A. Yes, sir.

Q. These arbitraries and differentials were almost pre-his-
2170 toric in their origin, aren't they?

A. Yes, sir, they simply maintained them; in fact they are bound to do it.

Q. I believe Mr. McPherson put in a schedule or diagram here,

showing that the cost has been an upward factor for a good many years; these arbitraries have remained during all that period of time, during all these years, notwithstanding the cost might have been going up?

A. Those arbitraries—those differentials would not prohibit advancing the rate out of St. Louis, Memphis or any other point; they are just there to maintain the relative difference between these various points.

Q. That would not affect the revenue as a whole, but would just disturb the revenue between these various gate-ways?

A. It wouldn't affect the revenue unless they abolished them entirely.

Q. And they haven't done that?

A. No, sir.

Q. And that would mean an increase in the rate?

A. Yes, sir, from points east of the Mississippi River; the abolishing of the differentials would—well, I don't see how they could abolish them; they are bound to maintain a difference between these points, and they had to fix a basis, which they called a a differential.

2171 Mr. HILL:

Q. Mr. Bragg, coming back to that question that we were discussing this morning of the effect of the sum of the locals on the interstate rate, Mr. Moore inquired of you quite a number of instances where they did and did not affect the rates. I want to know your opinion of the extent of the traffic affected by rates made on the sum of the locals.

Mr. MOORE: I object to that question unless you have Mr. Bragg qualify as to whether or not he knows.

Mr. HILL: Well, he can state whether or not he knows.

The MASTER: He is speaking as an expert is he not?

Mr. HILL: Yes, sir. And I don't know whether he knows or not. I am trying to find out.

The MASTER: Well, then, ask him whether or not he has any knowledge about it.

The WITNESS:

A. I can not approximate how much of the business is handled in that way.

Mr. HILL:

Q. What would be your opinion?

Mr. MOORE: I object. He has just disqualified himself.

2172 The MASTER: Are you asking him as an expert or as having personal knowledge of it?

Mr. HILL: Just as an expert. He has qualified as having had 25 years' experience.

The MASTER: Go ahead and ask him.

Mr. HILL:

Q. Now, that is the question. Could you give your opinion of it, Mr. Bragg?

A. I can give my personal opinion about it just as I have said before. I couldn't give any definite figures on it at all.

Q. Well, that is just what I am asking, is your opinion. I couldn't assume that you could give a calculation on it.

Mr. MOORE: Now, I want to ask a question based on that. Would your opinion be based on information or would it be merely a guess?

The WITNESS:

A. Well, partly information and partly guess.

Mr. MOORE: Then I object to it.

The MASTER: Answer it.

Mr. MOORE:

Q. What information have you?

The WITNESS:

A. Well, there has been some business of that kind
2173 handled here, but not recently. That, of course, I could speak about, but that was very small.

Mr. HILL:

Q. Well now, will you give an answer to the question? What would be your opinion?

A. I think it would be a very small percentage of the business.

Q. Are you familiar with the system of making rates to Texas common points?

A. Only in a general way.

Q. Do you know whether the rates from sea board territory to Texas common points through St. Louis or Memphis have been increased or decreased in the last two or three years?

A. To the best of my recollection all the rates in Texas have been increased.

Q. Do you know whether it is a part of that common point system that the rates to Galveston are supposed to be the same,—from Galveston to Texas common points, are supposed to be relatively the same?

A. Do you mean from the sea board to Galveston or to interior common points?

Q. No, I mean from Galveston to interior common points.

A. I don't know much about that situation. I think they carry some tariffs out of Galveston into Texas points, but just what the basis of them are I don't know.

Q. Do you know whether those Galveston rates to Texas points have been increased or decreased while this increase through St. Louis has been going on?

A. No, I don't. They have a common disturbance there
2174 once in a while, but I haven't kept up with it.

Q. In speaking of this question of the cost of the service,

which is supposed to be considered when rates are made, do you know whether the railroads have any cost accounting system by which they can determine the costs on any given commodities?

A. No, I don't.

Q. You never knew of any such statistics being used while you were in the service?

A. I wouldn't have known of it. That is generally a matter of the accounting department.

Q. You are not familiar with that?

A. No.

Q. Now, I understand your testimony about the classification is that, while the committees are supposed to take into consideration bulk and space and value and risk and things of that kind, that the result of their work is full of inconsistencies where those considerations are ignored. Isn't that about the effect of your testimony about that?

Mr. MOORE: I object to that.

Mr. HILL: I think that is legitimate.

The MASTER: Answer it.

The WITNESS:

A. That has been my experience.

Mr. HILL:

Q. You have had pretty intimate experience with the
2175 Western Classification too, have you not?

A. Yes, I have been handling it a long time.

Q. Mr. Moore brought out that you had been attending some meetings of the Western Classification. Did they give you a hearing on your matters?

A. No, sir.

Q. Kind of a hard crowd to get in to?

A. Well, it is usually out horseback riding and a few clerks do the work.

Q. Have a pretty good time down there, don't they?

A. Yes, they usually do. Incidentally a few games of poker.

Q. Are those meetings attended very generally by the intrastate shippers?

A. Oh, they are always besieged principally by manufacturers and people who are sometimes merchants—generally manufacturers though.

Q. Men that have very large shipping interests go down and have their meetings with them?

A. Well, they go down there and apply for changes in weight or rate or something of that sort.

Q. They go there and discuss changes in weight or *or* bulk and the rates as it refers to manufactured articles?

A. The rate; that is, the Classification sometimes fixes the *the* weight or rate on manufactured goods that become prohibitive perhaps, or with some other point that has the same goods possibly in a

territory covered by some other classification. They are get-
2176 ting around to as nearly perfect as they can. It is a good deal better than it used to be.

Q. Are you familiar with the Texas exceptions to the Western Classification?

A. Yes, sir.

Q. What is the extent of that? I don't mean in detail, but just generally speaking?

A. Why, they have the same thing that is applicable to Louisiana, Oklahoma and Arkansas.

Q. That is published by the railroads,—those exceptions?

A. That is published. In fact, it is advanced by the railroads, those exceptions.

Q. That is, where the railroads change those classifications by meeting those exceptions?

A. Yes. They don't go to the chairman of the classification but through themselves.

Q. Through the Southwestern Lines Committee?

A. Yes, sir; independently of the classification committee.

Q. For what purpose is that done?

A. Well, it is to cover up and account for inconsistencies in this Western Classification.

Mr. MOORE:

Q. Doesn't it grow largely out of conditions as local to that territory?

A. Well, that is true; yes.

Mr. HILL:

Q. There is a large volume of business out of Arkansas in the Texas classification to those points?

A. Yes, sir.

2177 Q. How is that?

A. Yes. You mean by the Iron Mountain?

Q. Well, no, my question is general. They apply to shipments out of St. Louis?

A. Yes, sir, those exceptions apply?

Q. And the traffic passing from St. Louis to the Texas common points would be moving under a classification different from those fixed by the Western Classification?

A. Yes, sir; everything that is not covered by that classification.

Q. Now, take a shipment moving from St. Louis to Texarkana and an interior shipment moving from St. Louis to some common point just beyond Texarkana, one of those shipments would move under the Western Classification and the other under the exception to it, would it not?

A. No, one would move,——

Q. This Texarkana tariff is governed by the Arkansas exceptions is it not——

A. If so, they would both be governed by that Texas exception.

Q. I was under the impression that that Arkansas exception applied.

A. Both tariffs are governed by the same exceptions.

Q. What tariffs are you referring to?

A. Those to Texas common points and those to Texarkana proper.

Q. Well, Texarkana is governed by Texas common point exceptions, isn't it?

A. Yes.

Q. Well, take it to Little Rock.

A. Little Rock is governed by the same exceptions, but they
2178 are applicable on the Arkansas tariff, interstate.

Q. Well, suppose two carloads of freight come out of St. Louis of the same kind; one goes to Hope, Arkansas, and the other to Texarkana. One moves under one classification and the other under the other classification?

A. If they are not covered by the commodity rate.

Q. Yes. I am taking some commodity not covered by the Texas exceptions.

A. Most all freight moving into these big centers is covered by commodity rate,—most all carload freight.

Mr. MOORE:

Q. Is there any difference in these exceptions that would obtain in Arkansas and Texas?

A. I think there is some, not much.

Q. Any that is material?

A. I don't think there is anything very material. I think there is more of them in the Texas than in the Arkansas exceptions, and practically——

Q. Practically about the same?

A. I think so.

Mr. HILL:

Q. Are the Texas exceptions governed by reason of the water conditions at Galveston?

A. I don't know.

Mr. MOORE:

Q. Mr. Bragg, your attention was called on re-direct examination to an exhibit filed in this case by Mr. McPherson showing an increase in the cost in the expense of transportation. Are you familiar with the increase that has occurred since 1900 in the cost of labor,
2179 material and supplies that enter into the transportation and the maintenance of railroads?

A. Only in a general way.

Q. You have no definite information?

A. No.

Q. You know, do you, that, take from 1900 up to 1908, there had been a very material, very large increase in the cost of everything that entered into the cost of transportation, don't you?

A. Well, I have heard that the cost of material going into construction had increased very materially.

Q. Did you ever hear that the cost of labor had increased any, to a very great extent?

A. Well, no.

Q. I believe you stated this morning there was at least 20%, in the aggregate, reduction in the rates fixed by the Commission below those that had been in force previous to the time they issue their schedule?

A. I don't remember whether I stated that. Believe you asked that question, and I told you possibly it was right.

Q. Has there been any material increase—was there between the date of the adoption of the Commissions's tariff in 1900, and the adoption of distance tariff #3 in June, 1908, and material increase in rate?

A. State rates?

Q. Yes.

A. Well, there had been no increase, I know of except this court tariff.

2180 Q. That was before the court tariff took effect?

A. Do you mean this tariff?

Q. Yes?

A. I can't say.

Q. Just state is it not a fact in the aggregate that the rates were not increased by the Commission from the time they established their first tariff?

A. No, I don't think there have been any material changes. I mean down to June, 1908. There were some changes made now and then but I can't tell you exactly what they were, without having the other tariff here to check against.

Q. Well, the secretary of the Commission has testified about that, and shown there was no reduction in the rates. Now what I want to ask you is this: You know there has been a very large increase in the cost of production of all commodities in common use in the country, and that all manufacturing and industrials,—that the cost of operating all industrial plants in the country has increased materially in the last 10 years?

A. I know the cost of living has increased.

Q. Well, hasn't the cost of manufacturing increased, in labor and in the cost of material that enter into manufactured articles?

A. I would imagine there has been some.

Q. Is there not also a corresponding increase in the price at which the output of the industrial concern have been consummated? Is that not what has increased the cost of living?

A. Lumber, I think: that is, the forest product, has increased. I can't say as to steel rails and things of that kind, because I don't know.

2181 Mr. HILL:

Q. While this increase in some lines has been going on, have not the facilities of the railroad to carry freight cheaper also increased?

A. Oh, unquestionably. Unquestionably they are seeking to do that all the time.

Q. In what way have they cheapened the cost of carrying freight and passengers?

A. Larger tonnage in trains, re-advancing freight rate and interstate rates.

Q. What about the increase size of the car?

A. Well, that is an increase of tonnage. Over the Iron Mountain I know of a time when 18 and 15 10-ton car was a train load to Texarkana. Now they average 50, I think, with an average of 20 tons to the car.

Q. They have reduced the grades matterially too, have they not?

A. They have reduced the grades considerably, in many instances.

Q. And straightened the curves?

A. Yes, sir, of course, they had to do that to pull bigger trains, I don't think though the train crew wages now are very much different than 10 years ago, but they do double the service.

Q. Then while there has been some difference in some direction there has been a corresponding increase in others, has there not. What is your opinion as to the comparative cost of hauling freight today with 10 years ago?

A. Well, I wouldn't like to answer that question. I have never examined any figures on it.

2182 Mr. MOORE:

Q. Just one question, Mr. Bragg: Have you any ideal what it cost the railroad company to produce these increased facilities in the transportation of freight, to get larger cars, reduce the grades, and streighten out the curves?

A. Oh, yes it cost something.

Q. Cost a good deal doesn't it, millions of dollars?

A. I expect, but in the mean time they have earned more.

Witness excused.

2183 F. P. JOHNSON, being recalled, testified as follows:

Mr. HILL:

Q. Some questions have been asked you heretofore about the terminal facilities in Fort Smith. I don't believe it has — made quite clear in your testimony heretofore. Do you know the extent of the Iron Mountain Terminal at Fort Smith?

A. Do you mean the mileage of tracks in the yards?

Q. Yes?

A. No, sir.

Q. Or the amount of property owned there for terminal purposes?

A. No, sir.

Q. Have you in your office a map or blue-print, of it filed where we can get it conveniently?

A. There ought to be a blueprint, not in the Auditor's Office, but in the engineering department of the Ft. Smith terminals.

Q. I would like a statement of the amount of property owned there

for terminal purposes, at the same time. You will furnish us with this will you?

A. Yes, sir.

Q. Now, Mr. Johnson how do you charge the expense of the Ft. Smith terminal? To what accounts does that go?

A. What expense accounts?

Q. Yes, I mean geographically, where is it charged?

A. The State of Arkansas. Now the train service that passes through Ft. Smith and Van Buren is divided on a mileage
2184 basis, but the station and yard service is charged to the State of Arkansas at Ft. Smith.

Q. That is what I am referring to—the exhibit in your testimony—it is charged to the State of Arkansas?

A. Yes, sir.

Q. Have you in your office any separation of the terminals expenses of Ft. Smith from other expenses?

A. No, sir.

Q. Is there any way that that could be ascertained from the books kept in your office?

A. I don't believe that the entire expense of the Ft. Smith terminals could be determined now over that period. There are certain items that could be, but others that come from labor and repairs—the same conditions prevails at Kansas City during the Missouri rate cases. We were unable to get that information during the entire period. These operating expenses are maintained by accounting districts.

Q. What accounting districts would cover these Ft. Smith terminals?

A. All mileage from the Okla. State line to Argenta, or Ft. Smith crossing, that is the central accounting district, the central division.

Q. These operating expenses would be swell*oad*ed up in the expense of about 165 miles?

A. Yes, sir, a hundred and sixty five miles.

2185 HENRY WILLMERING, being first duly sworn and examined, deposed as follows:

Direct examination.

By Mr. HILL:

Q. Please state your name, age, residence and occupation?

A. Henry Willmering, aged 40 next birthday, occupation, employed by the Corporation Commission of the State of Oklahoma, designated as auditor in charge of its division of accounts and statistics.

Q. How long have you occupied the position of Auditor of the Oklahoma Commission?

A. My association with the Oklahoma Commission began with the beginning of statehood in Oklahoma, in November, 1907, and I have been continuously employed since that time.

Q. What are your duties in your present official position?

A. My duties are to check, in the first instance, my duties are to

prepare inquiries relating to statistics and accounts, of all public service companies operating in the State of Oklahoma, express companies, railroad companies, street railway companies, electric light companies, telephone, telegraph companies, and electric light plants, and to describe the accounting system under the direction of the commission, for such companies; to prepare forms for annual returns to the commission, to analyze such reports, check them for omissions and variations and discrepancies, to prescribe forms for monthly reports of revenues and expenses for such public
2186 service companies, and to investigate the various accounting systems throughout the United States, in use by such class of companies, and in a general way, to have entire supervision of all and any matters relating in any way to accounts and statistics.

Q. Prior to your engagement by the corporation commission, what business were you engaged in?

A. In railroad service.

Q. I wish you would state somewhat in detail, what experience you have had in railroad service?

A. I have occupied various positions in the operating department, as agent for railroad companies, beginning in the year 1892, with the Pennsylvania Company in the City of Chicago, and ending in the year 1907, with the Missouri, Kansas & Texas Ry. Co., in the State of Oklahoma.

Q. Just state the various positions you held with the different railroads; I want to show the line of work in which you were engaged before you went with the Corporation Commission of Oklahoma.

A. Beginning in the year 1892 for the Pennsylvania Co., as yard clerk in their 55th St. Yard, subsequently in the abstracting of their local office at Madison St., local car accountant's office and in billing freight; with the Wabash since that time as bookkeeper in the cashier's office, local station and station accountant; also, with the claim and tracing department as cashier, and as agent for the Wabash and subsequently with the Missouri, Kansas & Texas
2187 Ry. as agent at Cleveland, Ohio; subsequently as agent at Cleveland, Okla.

Q. Have you made a study of railroad accounting and distribution of railroad costs?

A. I have given much time and thought and attention to matters of that kind since becoming associated with the Corporation Commission of Oklahoma.

Q. Are you familiar with the accounting system put in force by the Interstate Commerce Commission?

A. Yes, sir, I am entirely familiar with it.

Q. Have you been engaged in investigating accounts of distribution of costs, distribution of the property, of revenue, between state and interstate traffic?

A. I have given much time and thought to these problems; I have heard the testimony of eminent railway accounting officials; I have read the testimony of eminent railway accounting officials; I have attended the convention of American Association of Railroad ac-

countants at Cincinnati; I have read the sense of the meetings of the National Association of Railroad Commissioners, and have read after Prof. Adams of the Interstate Commerce Commission, and as a matter of fact, I have endeavored to get everything relating in any way to matters of that kind that was printed.

Q. Have you kept in touch with the rate litigation involving these questions, in Missouri, Arkansas and Oklahoma?

A. I have read a great deal of the testimony that was offered in these cases, yes, sir.

2188 Q. Are you familiar with what is known as the revenue theory of dividing proper and dividing expenses between state and interstate traffic?

A. Yes, sir.

Q. Have you given study and investigation to that theory or basis, whatever you may call it?

A. I have.

Q. I wish you would express your opinion, as to whether the division of property between state and interstate business, based upon the gross revenue received from state and interstate business, is a fair division of the property devoted to these respective uses?

A. I do not think it is.

Q. I wish you would give your reasons for your opinion?

A. My reasons are that on a revenue basis, property assignable to any character of business, should be based entirely upon the rate of charge; if the rate of charge is increased or decreased, the value of property would correspondingly increase and decrease, and on the same volume of business of ton miles or passenger miles, or in volume, would be up and down, according with the rate of charge, as it increased or decreased, and in my judgment, it is too elastic; there should be some fixed basis that would in some way assign the property to any particular class of business that would be more rigid.

Q. The exhibits in this case show that the revenue per ton per mile on the Iron Mountain Railroad, in the period of our inquiry, on interstate freight traffic, is 6.750 mills, and the revenue

2189 on the intrastate traffic, per ton per mile is 13,377 mills; that is found in Exhibit #5 of the Iron Mountain Railroad. In the testimony of Mr. Kimbell, taken on behalf of the defendants in this case, it is shown that the average revenue per ton per mile on state business is 20 mills, and on the interstate is 8½ mills; that was for the period of six months, ending December 31, 1907, on the St. Louis, Southwestern Ry. In view of these facts, I wish you would state your opinion of the effect of using the revenue as a basis of dividing the property.

A. The effect would be, that owing to the revenue or rate of charge per ton per mile, all other things being equal, that it would throw an extraordinary burden upon the intrastate traffic, and would require the intrastate traffic to earn a great return upon the valuation of the property than would be required of the interstate traffic, and would result in unreal profits on interstate business, and would throw a very heavy burden upon intrastate business.

Q. I am confining this inquiry to the division of property upon the revenue basis.

A. Yes, sir, but at the same time, it would assign to the intrastate business, a greater proportion of the property than would be justifiable or than would be fair, in my judgment.

Q. On account of a larger revenue per ton per mile being earned upon that than upon the other?

A. Yes, sir.

2190 Q. It was shown in this case that after this period of which I have given you the figures, that the intrastate rates were increased 96%, and the interstate 9%; I am using the round figures, and leaving out the decimals; during the month of January, 1909, the St. Louis, Southwestern Railroad conducted its business with those respective increases, 9% on the interstate and 96% on the state, as compared with the period for which I have given you the figures heretofore; I will ask you what effect or influence that would have upon the division of property upon the revenue basis?

A. It would correspondingly increase the value of the property assignable to intrastate business, and would increase the burden for intrastate business; there would be no corresponding increase in the property assignable to interstate business, and the result would continue as it was in the first instance, that the burden was thrown on the intrastate business, and unreal profits and a heavy return on the property valuation would result from the interstate business.

Q. Would there be any real difference in value of the property used for state business and that used for interstate business, by reason of change of rates?

A. In reality there should be none, but it would result in increasing the value of property for intrastate business, when in reality there should be no such increase.

Q. And result in a relatively smaller increase in the interstate when in fact there was not?

A. Such assignment would result in a decrease of the valuation of interstate property.

2191 Q. When in fact, there is no such fluctuations in the property itself?

A. When in fact there should be none.

Q. In your thought, study and investigations on this subject, have you reached a conclusion as to what would be a proper basis of dividing a conclusion as to what would be a proper basis of dividing the property between state and interstate?

A. I have.

Q. What is that?

A. In my judgment, the division of property between state and interstate business, should be on the ratio that the intrastate expense is to the total expense within the state.

Q. Dividing it then upon the basis of expense, instead of a basis of revenue?

A. The cost of earning the revenue.

Q. Why is that?

A. After the expense is ascertained upon a fair basis, it is obvious that the expense would remain the same whether the rate was increased or decreased, and it is obvious that if there is a more rigid way of ascertaining the value of property, and it is not subject to ups and downs of rates, and to a decrease or increase of revenues, in order to ascertain the value of the property, it approaches the actual conditions to a greater extent than any other basis I know of; when the value is ascertained on that basis, in my judgment, it is nearer real than upon any other basis I have heard testified to or
2192 argued.

Q. I believe you have testified that you have given thought and attention to the division of expenses, as well as the division of property upon some proper basis?

A. I have.

Q. I will ask you what is your opinion of the method or theory of dividing the expense between state and interstate traffic, and upon revenue derived from each traffic respectively.

A. I worked out a form in numerous ways, and applied to railroads operating in Oklahoma, and I have found that it always results, owing to the higher rate of charge for intrastate business, it always results in showing, what, in my judgment, is unreal profits for interstate business, and that the extra cost theory, in addition to the revenue basis, it shows there could not ever be any rate by any state regulative or government regulative body, that might not be declared confiscatory by the courts; I believe the foundation was invented for railroad purposes only, and I believe some clever railroad lawyer is responsible for the invention.

Q. Is it used in practical railroad work at all?

A. In the real railroading I have done, I have never known it *to* be used.

Q. You spoke of the extra cost, are you referring to the extra cost which various witnesses in these rate cases have burdened the intrastate traffic with?

A. Yes, referring to the testimony of men like Mr. Carl Gray of the Frisco, and Mr. Dodridge and Mr. McPherson, and in
2193 the various cases heard before the Corporation Commission of Oklahoma.

Q. Are you familiar with the rates, state and interstate, prevailing in this section of the country, and have you made a study of them?

A. In a general way I am familiar with them, yes, sir.

Q. Are those rates so made that they reflect the cost of service, and that the rates can be taken as a measure of the cost or expense of handling the traffic?

A. In a general way, the rates are not made on the cost of service. I believe that railroad rates are made on tradition, not on condition, and from my investigation, I find that railroad rates, when they are made without restriction, are primarily made by the traveling freight agent or a contracting agent, and by up-to-date freight agents; they feel the pulse of the business around the territory occupied by their company, and in the past, it has been the

custom that if the business was offered and could not move at the standard rate, a lower rate was made, irrespective of the cost of service, to get the business. I have been present at the cross-examination and assisted in the cross-examination of many of the eminent railway traffic officials who are at the head of the traffic departments of those roads operating through the state of Oklahoma, and I have never heard one state positively that he had any regard for the cost of service in making rates.

Q. Could a railroad company operating in the section of the country, have any cost accounting system by which they
2194 could ascertain the cost of handling any given traffic?

A. I have never discovered it if they have, and I don't believe they have; if they have, it is a dark secret, locked up in the breast of some accounting official that I have never discovered.

Q. It hasn't come to the light of day in these investigations?

A. No, sir.

Q. What statistics have they, if any, upon the cost of doing their business?

A. The Pennsylvania Co. and Wabash Company ascertain their average cost per ton per mile and per passenger per mile, they have done that on the Pennsylvania road since the year 1867.

Q. That is, the aggregate cost per ton per mile of all the traffic?

A. Yes, sir, of all the traffic; in other words, feathers, coal, silks and sand, carload and less than carload, and gives the general average of cost.

Q. All of the railroads keep such systems as that?

A. Generally that has been the practice in the real art of railroading, yes, sir.

Q. But that general statement does not show the cost upon any particular commodity or class, does it?

A. No, that would be necessary to analyze the commodities that have to be segregated, separated and the ton miles determined for each commodity and average haul, and all such matters taken into consideration, in order to measure up the real cost.

2195 Q. That has not been done?

A. Not to my knowledge.

Q. Do you know whether the rates prevailing in this section of the country are made upon zone or blanket rates, and whether there is any considerable extent of them so made?

A. Yes, sir, that is one of my reasons for stating that rates are made irrespective of costs.

Q. I wish you would explain that; explain how those rates are made, and what effect it would have upon the cost?

A. In the beginning of our investigation upon rates in the State of Oklahoma, we found there was a lumber producing zone in Louisiana and Texas, and I found—I prepared a map for General West, which he used in the conference at Kansas City, and succeeded in having certain interstate rates reduced at that conference; the lumber zone in Texas and Louisiana, they apply from that zone to Omaha a rate of 23 cents, and the same rate is applied to inter-

mediate points in Oklahoma, and in Kansas and in Missouri, and in Nebraska, irrespective of the haul or the distance.

Q. Roughly speaking, how much territory would be included in that zone, where the rate is the same?

A. I don't recall the distance now, but I presume the maximum distance of the haul would be from Bowman, Texas territory to Omaha, via the Santa Fe, and its connections at Kansas City or Topeka, at Kansas City I guess; that would be the maximum in my judgment, about a thousand or twelve hundred

2196 miles.

Q. What would be the minimum haul of the same weight?

A. I believe we found the minimum haul was a distance of about 250 or 275 miles.

Q. Then roughly speaking, there is a haul of about four times the distance for the same rate, is that correct?

A. Yes, that again shows that rates are made irrespective of cost of service.

Q. Isn't there another factor entering into that, that is the division of the rate between different railroads?

A. Yes, sir, in some instances tap lines give constructive mileage or flat rate per car rate, which absorbs a great part of the revenue before the rate is pro-rated with the connecting lines, and results in a very low rate per ton per mile for the roads participating in the haul.

Q. Then there would be wide differences in the revenue received from rates made under such a plan?

A. Yes, there would be wide differences; the rate might range all the way from possibly three or four mills per ton per mile to 12 or 15 mills per ton per mile; in my investigation, I have seen cases of that kind.

Q. Is there a large traffic moving under this lumber rate that you are referring to, from that zone.

A. Yes, sir, a large volume of business.

Q. Are there any other commodities where there is a large traffic, that have their rates made in the same way, to your knowledge?

A. Yes, the grain rates from Kansas City to Gulf points;

2197 we discovered that the rate from Oklahoma points to the Gulf was the same rate that prevailed from Kansas City to the Gulf, plus the local rate from Oklahoma points to Kansas City, and that discloses the entire scheme of rates that obviously was made without respect to the cost of service.

Q. Explain what the difference would be there in the rate per ton per mile, speaking roughly of the different commodities moving different distances under that?

A. The rate would afford, in my judgment, all the way from say 5 mills per ton per mile to 20.

Q. Is there a large volume of traffic moving under such rates as that?

O. Yes, a great deal of Oklahoma grain moves under such rates, and grain from Western Kansas.

Q. What other instance do you call to mind, of rates made in that way, where there is a large volume of traffic moving.

A. The rates on crude oil and petroleum and its products, from Kansas refineries to the gulf.

Q. We are not producing oil in this state, and I will not pursue that; I will ask you about coal?

A. That condition prevailed on coal, and recently I have investigated and I have discovered, from reading a number of tariffs, that there are more than ten thousand rates in existence today, that are lower per ton per mile, for mines in Indiana and Illinois to points in Dakota, Minnesota, Iowa, Nebraska, Kansas, Missouri, Oklahoma, Arkansas, Texas, and a great many other states,
2198 that are lower per ton per mile than any rates ever made by our commission or by your commission, and they are made in the same manner; their groups of rates are made in about the same manner as Texas lumber rates, from group to group or zone to zone.

Q. Are you familiar with the coal movement from the Rocky Mountain region?

A. No, sir, only in a general way.

Q. Are the rates made in the same way, do you know?

A. I cannot recall from memory now, I am not prepared to say.

Q. How is cotton moved?

A. Cotton is usually moved into the compress upon first class rates; I have not made a very fair investigation in respect to cotton.

Q. Do you know whether cotton goes to the distributing points in the east for export, upon the same rate from one point in the east to another point; have you examined that?

A. I have not examined that thoroughly; I know that is the case in a general way, but I have not investigated it.

Q. Isn't there a difference in the absorption of compress charges and handling of cotton, where the handling expense would be the same, in one instance the compress charge is absorbed and in the other, it is not?

A. Judge, I haven't investigated that thoroughly, and I am not prepared to testify in regard to that.

Q. Are you familiar with the Texas common point rates; I mean, with the system; I do not mean with the individual
2199 rate?

A. In a general way, yes.

Q. What is that system?

A. Texas common point rates are built from the gulf to points in Texas; the general minimum haul reaches 200 miles, with a maximum rate at that point and the maximum haul is something like 7 or 800 miles, with the same rate applicable to the short haul and maximum.

Q. I believe it is in evidence in this case already, Mr. Perkins Exhibit 42, that there is about 2600 of those stations in Texas where the common point rates prevail?

A. From what points?

Q. Say from St. Louis and north and east.

A. Yes, those are all in the Leland tariffs and in the directory published by Mr. Leland; I know about those rates in a general way; I thought you were referring to the rates made by the Texas Commission.

Q. No, I mean the rates to Texas from the north and east, through the trade centers?

A. Yes, sir, there is a blanket territory or zone territory and also from Oklahoma, on which rates are made from Cleveland, and Dayton, and Detroit, Chicago territory, and St. Louis and Missouri river territory, and I believe most all those rates are made without any true regard to the cost of service.

Q. They are substantially the same rate, with variations in distances, with various divisions of the rate between the different railroads?

2200 A. Yes, sir.

Q. Now, not to pursue the illustrations into too much detail, I will ask you generally, what effect these various illustrations that you have given, have upon the revenue of a railroad, and what effect it would have upon dividing the expenses of the traffic between state and interstate business?

A. It would have the effect of assigning to a state like Oklahoma, or Kansas, Missouri or Arkansas, a very short rate per ton per mile for interstate business through these states, and would result in assigning to these states an interstate revenue per ton per mile, which in some instances, I believe would be less than the cost of service, and the aggregate interstate revenue assignable to these states, or to any of these states, would be in the first place, assumed to be upon an equality with intrastate revenues; that is, that it would not cost any more to earn a dollar of interstate revenue than a dollar of intrastate revenue, and the rate of charge being so much higher upon intrastate revenues than it is upon the pro-rata of interstate revenues, which would result in showing, for interstate business a too small profit, and would throw the burden upon intrastate business of unreal expenses.

Q. And that burden would not be real burden incurred by that traffic but an unreal one placed upon it by this method?

A. It would be an arbitrary burden, not real at all. The

2201 revenue basis assumes that it would not cost any more to earn a dollar of intrastate revenue than it would to earn a dollar of interstate revenue.

Q. If in addition to dividing your expenses that way, you go to adding to your interstate revenue 100% or from 100 to 125%, what effect would that have upon getting at the truth of that division?

A. It only results in the application of opinions of men, in order to ascertain the expenses, when the real and actual facts would be absolutely different from the opinions of certain men; preconceived notions of eminent men I have heard testify, have been destroyed by an application of real facts and figures.

Q. Suppose that you were directed to ascertain as near as possible, the actual cost of state and interstate traffic, not upon any theory, but

according to actual conditions as near as possible, to find the actual conditions and as near as possible to get the actual expense located to different classes of traffic, and where that could not be done, to get an approximation as near as possible, how would you go at that kind of work?

A. First, in the operating expenses, I would ascertain the actual expense for maintenance of way and equipment, within the state.

Q. Suppose that was a given factor, that you had the actual maintenance of way and structures expense, then what would you do with the division of that between these traffics?

2202 A. In making the division between the passenger and freight traffic, I would ascertain the actual revenue train miles, passenger, freight, and mixed train.

Q. Let me have you give an explanation there of what you mean by revenue train miles?

A. Train miles producing revenue for the road.

Q. Excluding work trains?

A. Yes, sir, and classified in accordance with the classification prescribed by the Interstate Commerce Commission.

Q. Go ahead?

A. Mixed trains carry both passengers and freight; I am not familiar with the operation of the mixed trains in Arkansas, but in Oklahoma, we have a number of mixed trains which are practically accommodation trains, which carry more than one coach, passenger coaches; for that reason, it would be fair, in my judgment, to assign 50% of the mixed train mileage for the ascertainment of the passenger expenses.

Q. That, of course, would be dependable upon local conditions?

A. Yes, sir.

Q. And suppose, as it is in Arkansas on the Iron Mountain particularly, that there are a very few of those trains?

A. Whatever the conditions are, I would be governed by such conditions.

Q. You would apply that according to the respective conditions?

A. Yes, sir.

Q. Do you know what the Interstate Commerce Commis-

2203 sion basis is, for that division?

A. I think that Prof. Adams or some of his associates, have indicated that 25% of the mixed train miles should be assigned to passenger expenses, and I would apportion the expenses upon this basis; I would ascertain the sum of the passenger train miles plus this percentage of mixed train miles, and get the ratio that is to the total revenue train miles, in the state and apportion that expense of the total operating expense, to the passenger business for maintenance of way and structures; the remainder would be assignable to freight traffic.

Q. Now, take up your freight traffic, how would you assign the remainder of that?

A. If, in view and in light of the testimony that has been offered in these various cases, in order to satisfy myself with respect to the operation of the so-called expensive local way freight trains, and the

through freight trains,—in my judgment the separation could be equitably made by finding the number of freight car miles performed by the local way freight trains, and such as were classified in the official schedule as local way freight trains——

Q. You would refer to the local trains as classified?

A. Yes, sir, in the official employee's time tables.

Q. But the real index to that, I presume, would be the actual work of each train, wouldn't it?

A. Yes, sir, that would be the real index, and that could be secured from the wheelage reports of the conductors and dispatchers and officers of the company, on established forms that the rail-
2204 roads would have.

Q. That is an ascertainable fact?

A. Yes, sir; after I ascertained from my wheelage reports or from time tables, or whatever I considered or found or determined to be the best index, I would find the number of car miles made by local freight way trains for a given period, and the ratio of that to the total car miles in the state, I would ascertain the per cent of that ratio, and that per cent of the total maintenance of way expense, I would assign to local way freight trains.

Q. That is for the freight?

A. Yes, sir.

Q. You have already excluded the passenger?

A. Yes, sir.

Q. Isn't there another unit that is used by railroads other than car miles?

A. Yes, the ratio of the local way freight train miles to the total train mile.

Q. That is the train mile, instead of car mile?

A. Yes, sir.

Q. Both of those units are in common use in the divisions of expenses by railroads are they?

A. They are in common use in the division of expenses between freight and passenger.

Q. Is the car mile used to divide between the freight and passenger, or is the train mile used?

A. The train mile is commonly used.

Q. Speaking of the freight traffic, I believe you say you would make it upon the car mile; I would like for you to give
2205 your reasons why you think that would be better?

A. I would give it upon the car mile, for, from observation I find that oftentimes a local freight train would pull more cars, have more cars in the train, than the following through freight train, and I find it vice versa, and in order to get a fair average, I believe that car mile should be taken in place of the train mile.

Q. You think it is nearer the actual results than the train mile?

A. Yes, sir, in my judgment.

Q. The train mile, however, is the unit which is used for this purpose?

A. Yes, sir, Mr. Nay endorses the train mile for the unit of expense in his testimony before our commission.

Q. Mr. Nay is comptroler of the Rock Island?
A. Yes, sir.

Mr. MOORE: We object to that.

A. He is a very eminent accounting official and I would be governed by his testimony a good deal.

Q. Now, with that explanation of your units, I wish you would proceed with your plan; that would cover that account, wouldn't it?
A. Yes, sir.

Q. Now, take the maintenance of equipment, how would you handle that?

A. I would ascertain the actual expenditures made upon each locomotive, I would identify the locomotive and from the conductor's and engineer's reports, I would determine the mileage made
2206 by each individual locomotive in the state if possible.

Q. Can that be done?

A. It can be done on the M. K. & T.; I am not sure that it could be done by systems and methods employed by other railroads.

Q. I want to state to you the state of evidence in this case, in regard to the Iron Mountain; Mr. Johnson, I think, has testified that they have a pooling arrangement with the entire Missouri Pacific system; that they have various shops, one across the river from Little Rock, and at various other points, and the repairs are pooled between the states; are you familiar with that method of handling that account?

A. I have heard there was such an arrangement; I am not entirely familiar with the method, but if such a method was in existence or in practice, then an apportionment of the locomotive repairs could be made upon the ratio of the locomotive miles in the state to the total miles upon another system.

Q. And then again between the trains?
A. Between the local and through trains.

Q. There has been some testimony in this case, that there was an extra expense on the local trains, by reason of the additional stops and starts and switching done by it, more than was made by the though train; are you familiar with that contention and the facts upon which they base it?

A. I am familiar with the contention, but from observation
2207 and experience in railroad business, I found that a great deal of that is imaginary; of course, more frequent stops made by any train, would have something to do with the expense of repairs.

Q. Suppose that that was real, and you have the opinion of some of these eminent operating officials as to the extra amount of that, could you, as an accounting proposition, take care of that extra expense in the location of these expenses between local and through trains?

A. Yes, that is possible; you would want to use the opinion of these eminent operating men, and that could be worked out and ascertained.

Q. How would you work it out, say 50% was allowed for that or 25% or any other given per cent.

A. As between local and through trains?

Q. Yes?

A. For instance, the local train miles were 100, and the through train miles was 200, and the total 300, you could add 50% to the local train miles, making it 150, and the through locomotive miles would remain the same making it 350 the total; the ratio, with 50% extra would be the ratio of 150 to 350, in place of 100 to 300.

Q. And in that way, you would take care of these extra expenses that these eminent gentlemen think attaches to that kind of train?

A. That would take care of it in my judgment.

Q. Now, we have been discussing locomotives principally; would the same principal apply to maintenance and equipment of

2208 freight cars?

A. Yes, sir, between local and through trains, the ratio of the car miles.

Q. Now, the next one of these primary questions, is the traffic expense, I believe, what is your idea—do you understand what that traffic expense is?

A. Yes, sir, it is the expense of maintaining foreign agencies and advertising for business, and for the solicitation of business at points on connecting lines, and a great many of such offices are maintained in San Francisco, New York, and important business centers throughout the United States, representing certain railroads at such points, and advertising superior service and soliciting business from competing lines.

Q. What proportion of that, if any, should be charged to intrastate traffic?

A. I should ascertain the part of the expense assignable to intrastate traffic, I would investigate and define what office expenses of each were chargeable to that class of expenses that were located within the confines of the state, and would exclude any expenses relating in any way to any business outside of the state.

Q. Do you think that that business, that those offices outside of the state, contribute to the intrastate traffic?

A. A man would have to work on his imagination if he found such to be the case.

Q. As a practical problem, you think it affects the interstate traffic, not the intrastate?

A. I don't see how it could affect the intrastate in any

2209 way, only for those located in the state.

Q. City ticket offices and things of that kind.

A. Yes, sir.

Q. In the division between state and interstate, some of these gentlemen have testified that that should be divided on a revenue basis, what do you think about that? Do you think that would be fair?

A. No, sir, I think it should be divided upon the basis that the locating expense is to the total locating expense.

Q. That is a general accounting proposition that is considered sound?

A. I have heard it commended very highly by cost accounting officials; I have read their treatises and text books,

Q. Now, when you come to transportation expenses, the station expenses, how would you divide that between state and interstate, or can it be divided between state and interstate, upon a fair basis?

A. It could be divided upon the basis of tons handled, intrastate and interstate; I would determine the average haul for interstate business, and the average haul for intrastate business; I would charge two terminals to intrastate business; I would double the tonnage for that purpose, after ascertaining the expenses properly assignable to intrastate business. For example, if the tons intrastate was 100, and the tons interstate were 200, total 300, I would double the 100 tons of state and make it double the tons of state handled, and make it 200, and then I would ascertain the average haul for interstate business; and if it was more than 100 and
2210 less than 200, miles, I would then charge the interstate with 2 terminal expenses.

Q. Why would you do that?

A. Because, from observation and experience, I find that the interstate cars are handled at terminals the same as intrastate.

Q. You mean division terminals?

A. Yes, sir.

Q. What is the usual distance of those division terminals apart?

A. They average about 100 miles.

Q. You would take that as a determining factor, as to the number of terminal handlings?

A. Yes, sir, division terminal handlings, and if the average haul was over 200 miles, and less than 300 miles, I would multiply the actual tonnage by three, and in case of that kind, you would have 3 times 200, or six hundred, and two times one hundred or two hundred, the ratio is as 200 is to the total 800.

Q. Suppose that the intrastate business moved more than 100 miles; how would you handle that?

A. You have originating terminals or local stations, and destination—that would be two terminal handlings.

Q. You have to add one more?

A. Yes, sir, for the division terminal.

Q. If it ran over 100 miles?

A. Yes, sir.

Q. That would be your judgment of the proper way to divide that expense?

2211 A. Yes, sir, that is my judgment and observation of the expense at division terminals.

Q. In these cases, these eminent gentlemen to whom we have referred, have testified that there were two handlings on state business and only one on interstate, and in some instances, none at all on interstate; that is what they call trans-state; in view of their views upon this subject, suppose you would allow two handlings, and double your tonnage at stations of intrastate business, would that be giving the railroads all they were entitled to, on that division?

A. Yes, it would be very liberal with the railroads, give them all they were entitled to.

Q. And more too?

A. Yes, in my judgment.

Q. Certainly, it would be fair from their standpoint to do that?

A. Yes, that is about the maximum they have claimed from the testimony I have heard.

Q. Would that extra cost you have heard them put upon that, be fully taken care of if a division of that kind was made?

A. In my judgment it would.

Q. The maximum of it?

A. It would produce the maximum, yes.

Q. This is the station we are discussing, and not yards and terminals?

A. That is the expense of station and station agents, and employees, help in the yard chargeable to that account.

2212 Q. Are the yards included in that; isn't that under another sub-division fixed by the Interstate Commerce Commission?

A. The yard clerks?

Q. The man at stations or at terminals?

A. At stations for instance, they would have a yard clerk on the station force that would check the cotton on the cotton platform, and the loading of cotton.

Q. Under the interstate commerce classification of that, wouldn't that go in as yard service, that clerk you have referred to?

A. Yes, I am quite sure it would; the yard employees,—yard clerks.

Q. Take up that next, yard expense, how would you handle that between the local and through trains?

A. I would ascertain from the records the number of cars handled for each class of trains, by the yard switching crews.

Q. I believe you and Mr. Dodridge would agree on that proposition, if I remember his testimony correctly; that is an ascertainable fact, isn't it?

A. Yes, sir, it can be ascertained; I am not sure it can be ascertained on all roads, but on roads I am familiar with, it could be ascertained.

Q. Could the fuel be ascertained and how could it be located.

A. We have the aggregate fuel expense, and we could get the aggregate mileage performed by the locomotives; we could get the average cost per locomotive and that could be multiplied by the number of locomotive miles in the state, or the ratio could be ascertained.

2213 Q. That is an actual ascertainable fact?

A. From the present accounting system, yes, sir.

Q. Now the train men, wages and things of that kind, can be ascertained actually?

A. From the pay rolls, yes, sir.

Q. Loss and damage to freight, could that be ascertained accurately?

A. Yes, sir, from an examination of the voucher.

Q. That could be ascertained actually between state and interstate?

A. It could be ascertained from the billing.

Q. The accounting expenses, do you know any approved method

that accounting expenses could be ascertained and apportioned to through and local traffic?

A. It could be taken care of on the same basis that traffic expenses are taken care of, on the ratio of located expenses to the total located expenses.

Q. In other words, the overhead on the basis of direct expenses?

A. Yes, sir.

Q. Loss and damage to freight can be ascertained directly between state and interstate from the waybills?

A. Yes, sir, and from the vouchers.

Q. Now, taking your train expenses here, between local and through trains, having ascertained them in the way that you have explained, how would you work that out between state and interstate?

A. I would ascertain the character of the freight carried by each class of trains, and I would carry that in ton
2214 miles.

Q. By character, do you mean whether it is state or interstate?

A. Yes, sir.

Q. That is an ascertainable quantity?

A. Yes, sir, it can be ascertained from the billing from the waybill; I would get the ton miles performed for state and the interstate part, by each class of trains, get the ratio and the expense could be divided upon that ratio—the percentage.

Q. When you work out your expense that way, it would be nearer a true basis, nearer the actual facts than if you worked out your expense by a revenue basis?

A. Yes, sir, it would be more accurate, and it would follow in line with the testimony of the railroad experts, testifying before our commission.

Q. It would enable you to take care of these extra expenses, according to their opinion of what they are?

A. It would be facts and figures, applied to their theory, in a great measure; not altogether, however.

Q. It would have a great many of these matters you have testified to, would be actually and the others approximation?

A. Yes, that is true; the degree of accuracy would be greater than the degree of inaccuracy, and would have the revenue basis skinned a city block, because there is nothing to the revenue basis, in my judgment.

Q. We have gotten through with the freight, I don't care about taking the matter in too much detail; I will ask you generally if the passenger business could be worked up the same way,
2215 allowing for differences in character of business?

A. Yes, sir, along the same line, allowing for differences in character of service and character of business.

Q. How would you take care of mail and express on the passenger proposition?

A. In the apportionment of passenger expenses, I would find the space occupied by that class of business, mail, express and baggage;

that is, on the ratio of the passenger expenses, and to be assigned on the ratio of the passenger to the Pullman car, dining car or the sum of those, if any, of such class of equipment, the sum of those to the total passenger train car miles.

Q. Take the train as the unit and dividing it up into express and mail and passenger?

A. For example, if a train was made up of five coaches, two of which were for mail, express and baggage, the ratio would be as two is to five, or 40% of the cost of operation of the passenger train, which would be assignable to miscellaneous passenger revenues, and the remainder would be assignable to the cost of carrying passengers, and the earnings of strictly passenger revenue?

Q. Do you mean to passenger revenue or to mail and express revenue?

A. As I stated, in a passenger train consisting of five cars, two of which were devoted exclusively to mail and express, and other miscellaneous passenger revenues, and the third was devoted to the earning exclusively of passenger revenue, account No. 2, I would assign to the miscellaneous passenger revenue, the cost of
2216 earning it, 40% of the total passenger expenses.

Q. Now, in miscellaneous earnings, there are other items than that made by train?

A. Yes, sir, there are a few others infinitesimal.

Q. Just to take, without going into too many details about that, your idea is about this, take a train made up of five cars, you would have a locomotive, mail and express car and baggage car, and your passenger equipment was three cars, then you would divide that into five parts, and carry them to their proper head, along the line you have done in the freight business, is that the idea?

A. Yes.

Q. Now, you stated awhile ago, that the best division that you knew of, of the property, was on the cost basis; do you mean that it is the best possible one to be worked out, or do you mean the best that has been presented to you?

A. Under the conditions that have been presented to me, yes, sir.

Q. Don't you think that by a direct accounting system, if the railroads kept or were required to keep an accounting system, and get at these matters actually, don't you think we could get nearer at the truth?

A. Yes, sir, it is possible; we are making rapid strides in accounting, in all branches of accounting, and particularly in railroad accounting, there having been rapid strides made and uniformity is the effect.

Cross-examination.

By Mr. MOORE:

2217 Q. In your explanation and in your formulas that you have described for dividing the expense of operation, you have omitted a number of items; naturally you would do that, your attention not being called to them; I want to ask you if you will pre-

pare a formula showing the manner in which you would divide all the expenses of operation, as between passenger and freight and then between the various items of expense that are incurred in freight operation, and between state and interstate, and I would suggest to you to follow the form of statement No. 5, Exhibit #3, filed by plaintiff in this case, and I will furnish you a copy of that form. Have you seen any of the exhibits filed by the plaintiff in this case?

A. In the beginning, I saw copies of the Rock Island and Frisco Exhibits, and I believe I saw copies of the Cotton Belt exhibits.

Q. That is, the exhibits that were used in the application for injunction?

A. Yes, sir.

Q. I mean the exhibits that have been filed since we began, to take testimony before the master in this case?

A. No, sir, I don't believe I have seen any of them.

Q. Now, I will ask you to prepare an exhibit covering the division between freight and passenger, and then the division of operating expenses, as between state and interstate, and follow the formula to which I called your attention a moment ago, namely, statement No. 5 to Exhibit #3, filed by plaintiff in this case, and I will

2218 furnish you a copy of that statement; I ask you to file that as Exhibit "C" to your testimony in this case, and I will ask you to file that as soon as possible after you prepare it; I wish to have it before I cross-examine you.

A. All right sir, I will do that.

For Exhibit C, see Vol. 9, page 5771.

Cross-examination continued.

2219 J. G. WALLACE, being duly sworn and examined, deposed as follows:

Direct examination.

By Mr. HILL:

Q. Please state your name, residence and present position?

A. I live at Russellville, Polk County, Arkansas, and am chancellor of that district, 9th Chancery District in this state.

Q. What connection did you have with the Arkansas Railroad Commission?

A. When the Legislature provided in 1900 for the creation of a commission to regulate the railroads, I was appointed on the commission by Governor Jones, on the 11th of March, 1900.

Q. That was the first Commission?

A. Yes, sir.

Q. You served as chairman part of the time, did you not?

A. Yes, sir, the second term; I served two terms; at the expiration of the first term I was re-elected; I was elected by the commission, chairman of the commission.

Q. How long did you serve on the commission?

A. Approximately about four years, not quite. I was appointed

in 1900, March 11th—it was 1899, March 11th, and served until about January 10th, 1903.

Q. You went off the commission at the same time Mr. Hampton came on, didn't you?

A. Yes, sir.

Q. Prior to the organization of the commission had there
2220 been any regulation of the railroad freight rates by the state?

A. None, no sir, not by a commission.

Q. Had there been any state control over freight rates?

A. No, practically none; they were free to make their own rates.

Q. What system of rates was in effect over the state, at the time you went on the commission, just describe the situation as it appeared to you at that time?

A. Of course, they had a distance tariff which provided in all cases where there was no other tariff that was applicable; that is, where they filed tariffs and fixed no through rate sheet applicable, the distance sheet is the tariff; that is, where the freight is moved strictly on a mileage basis, and you are supposed to pay for your mileage, but really that wasn't the prevailing tariff sheet; the distance tariff is supposed to be, and in fact is, the basis upon which the traffic is moved, that is, the mileage basis; now, they had superseded practically the distance tariff by their locals and specials; for instance, they had local rates prevailing between trade centers and outlying posts; that was the rate applicable between that trade center and a particular outlying post, and not applicable at all to intermediate posts, and there was a very substantial and vital discrimination sometimes as between these points, worked out through these locals. Then they had what was called jobbers' rates, that was a rate—their locals was a to and fro rate between trade centers and that particular
point, but jobbers' rates were rates that applied from the trade
2221 center out to the outlying post, but not back again.

Q. Not from the outlying point to the trade center?

A. No, sir, that was the distance between the locals and the jobbing rates, as their jobbing rates were even lower than their locals; then they had milling point rates that the commission never interfered with particularly; that was a rate on raw material into mills; the rule was that the road was at liberty to transport raw material into mills, and when it was manufactured, they were entitled to the out rate then.

Q. From the point of origin?

A. Yes, sir, and it took the Commission's rate, but into the mill we didn't try to regulate it; that was largely an interstate proposition, although many shipments were made to intrastate points from mills.

Q. Did you find any other objection to these tariffs than their discriminations?

A. Yes; we found this state of things; we found that they were discriminating against our trade centers, and practically, they were hampering their development; for instance, to illustrate, you take on packing house products, and in fact, all of the necessaries of life; they would ship from Memphis to points up the Ft. Smith road, that

is 75 miles distance from here, it was higher from Little Rock on all that class of goods than it was from Memphis, about 2½ cents, and so on up the road, and they competed with Little Rock, right from its doorstep, the first outlying posts, and when they got 75 miles above here, it was cheaper from Memphis. And then
2222 take the Iron Mountain; they hampered the growth and development of this city here so she could not go north for trade at all, on account of the interstate rate.

Q. From St. Louis?

A. Yes, and then they gave it some little advantage to points below, south, but yet when you took the combination rate, the rate from St. Louis here, and the rate to the points south, why the combination was much higher. So, it placed our trade centers at a disadvantage all over the state, that they could not possibly overcome.

Q. You say at a disadvantage——

A. Yes, sir, as compared with interstate points.

Q. Were the tariffs in such a shape that they could be understood by an ordinary shipper?

A. No, sir, not very well; an ordinary shipper, if he was a stranger—a merchant understood his rate ordinarily I suppose, but a man who wanted to make a shipment, who was not familiar with transportation or having freights billed, they could put him on most any rate they wanted to, and he would not know the difference; they had so many rates applying.

Q. They had so many tariffs they could put him on most anyone they wanted to?

A. Yes, and he would not know whether they were wronging him or not.

Q. That was pretty frequently done, wasn't it?

A. Yes, sir, they used to put him on the distance tariff; that was the highest tariff they had.

Q. What about the special rates; were there any such in force at that time?

2223 A. We found that every place in the state almost were favored shippers; those were secret rates that were not published.

Q. What were those rates, do you recall any particular commodity that they were on, how were they made?

A. Well, Morrillton got a rate, I remember that very distinctly, and the Commission came to know about it, they came and made complaint to the commission about a rate that was lower than anything above here; Plummerville could not compete with it at all, although it was in six miles of Morrillton; those were secret rates; those rates were not filed with the commission at all; we made an order on them to file all rate sheets of every character whatsoever with the commission, but those special rates they did not file.

Q. Wasn't there a great many individual rates, like milling plants starting out at some given point and they would get rates to some given city?

A. Yes, sir, I remember one very distinctly here; Mr. Denny owned some lime works out here about Batesville; he was one of

their favored shippers, and had a rate on lime, my recollection is from there here it was six cents, with the privilege of making a depot here, and then unloading it and storing it, and reshipping it — some other point, and still take another lower rate.

Q. Didn't a good many sawmills have special rates?

A. Yes, sir, a good many sawmill men and many merchants got many special favors; we ascertained all that, and in fact an industry could not start up, such as wood manufacturers,
2224 only by permission of the railroads; they would not give you a rate, whereas other men engaged at places where they didn't object to such an industry going up, could get a rate. We had factories up here, up the road here, could not go up at all on account of discriminations of the railroad; they would tell the fellow he was at the wrong place; I remember we had a mattress factory up there that could never prosper on account of the rates.

Q. At the same time then they had to have an industry and a pull both to get started?

A. Yes, sir.

Q. Were these rates, special rates, and rates to favored localities and shippers, much lower than published rates?

A. Yes, always, they were lower ordinarily, considerably lower.

Q. When you found that situation of rate affairs in the state, what did you and your associates do?

A. It took us a long time; we were at work a year; we had to first learn what the rates were, of course, because we couldn't revise or reform them until we knew about them; the people got out of patience with us, and the commission was very unpopular. The men who had been getting these favored rates, they were practically cut off; that is how we came to know so much about it; they would come to the roads and the roads would tell them they couldn't do that now, that this last legislature created a commission here, and we have got to work under their orders strictly, and they forbid and prohibit all tariffs like this, and we learned a great many
2225 of these rates in consequence; shippers would come to us, beneficiaries of these rates would come to us and make complaint.

Q. You had a pretty good size kickers' court?

A. Yes, sir.

Q. What did you do after you *find* this situation, to meet it?

A. The commission worked very hard; from the beginning, the first thing of course was to inaugurate some sort of system or arrangement, and we continued our labors until in January, before we got at all prepared to make any overt acts. Then, we prepared I believe it was in the month of January or early part of February; we prepared a rate sheet tentative in its character, and notified the roads, accompanying these notices with copies of these tentative rates. We had it prepared and served it on the roads, and notified them to appear before us for the purpose of revising—preparatory to the commission revising their rate sheets, and making a tariff covering transportation of freight in this state. They appeared, and as I have stated, the rate sheet we had accompanied with the notices was

tentative. We were not prepared to say just then that that would be the rate, but they appeared and that brought about a discussion between the roads and commission, which was continued from time to time, from about the latter part of January or early in February, meeting after meeting, until, as a result of these meetings and a thorough investigation, we promulgated a rate, known
2226 as the distance tariff, applicable to all freights in the State of Arkansas, or on railroad lines operating in this state, becoming effective, I believe, April 10th.

Q. 1900?

A. Yes. The roads met with us, and as a consequence of these meetings, of course, ideas were very freely exchanged both between the roads and the commission, and we promulgated that—we gave notice of the fact and promulgated the rate three times before we made it effective; each time they would come and show us where they thought it would be an injustice towards them; we would take out the inequality if we thought their point was well taken, and re-promulgate it, and the last meeting we had was about the last day of March, I think. That day all the lines were present, and we worked until about dark, it got so dark we couldn't see; we practically came to an understanding. I don't say that they agreed to it at all, but we came to an understanding; we had taken out and conformed to their notions in many particulars, and it was understood when we parted at heavy dusk, that we would promulgate that rate, reserving the right on the part of the commission to revise one or two commodities; we didn't want to be tampering with the rate all the time; when we put in the rate sheet, we wanted it to be a just one to the shipper and the road, and we recognized that to be constantly tampering with the rate would not be the proper thing to do; the roads would never know when they had a rate, so we
2227 wanted to put on something of a permanent character, and that was just to all, and that we could stand by, but as a final result, we reserved the right that we would revise two or three commodities at any time, which we did pretty soon afterwards, and with those exceptions the rate we promulgated seemed to be reasonably satisfactory to the road; it was to the commission, and those rates were effective when I retired from the commission.

Q. Was there much difference between the rate finally promulgated on April 10th, and that you issued as a tentative rate, about the 1st of February?

A. A very great difference; I would say the rates finally promulgated were at least a fourth higher than the first rates proposed, may be more.

Q. Why had you made this great increase, in your tentative rate, to the rate as finally promulgated?

A. The roads had stood aloof from the commission, and what we had learned from the roads, we had had to drag out of them, and when we issued notices that we were going to promulgate a rate at a different time, accompanied with this tentative sheet, that brought us together into a discussion, and that was thrown out somewhat *was* a feeler, for the purpose of getting light on the subject, and it

had the desired effect, and that brought us together in constant discussion during that time, and as a result of these conferences with them, we had arrived at just about the right thing we thought.

Q. They gave you all the information they had?

2228 A. Yes, they made figures with us.

Q. On what basis did they make these figures, and what basis did you consider in figuring these rates?

A. As a matter of course, the value of the properties had much to do with it; we considered they were entitled to a fair return on their investment, and the amount of traffic they were doing, and we thought would be done under our rate sheet; we thought it would very greatly increase traffic, because everything would move free and easy under it, and a man could locate anywhere in the state, and do as he pleased; he would simply pay as much as any other man; he would simply pay for his mileage; we believed it would greatly increase their revenues, that is, their carrying trade, and that way, they would make much more money, and at the same time, that it was a reasonable rate; that is, it was a fair compensation for their services.

Q. How did you determine or form an opinion as to what would be a reasonable rate, what data did you have before you or information before you in determining that?

A. We had their rate sheets, and their conferences with us as to what they could do the traffic for, and that influenced our action largely of course. I want to say when we parted, they were not particularly dissatisfied with the class rate; they rather, if anything, appeared to be satisfied with our class rate. Their objection was as to our commodity rates; they thought that the commodities ought to be higher, but we assured them—we had to come to some conclusion, and we ultimately did come to a conclusion, and we as-

2229 sured them at the time, that if the rates were not compensatory by an application, as that was the test at last, we would hear them, and we didn't want them to transport property in this state from one point to another at a sacrifice, and we wanted them to have a fair return on their investment, and if these rates were not compensatory, that we would revise them at any time that they could convince us of that fact.

Q. Did they ever come back, one or all of the roads, while you remained on the commission, with a statement or suggestion that the rates that you had put in were not compensatory, and that they needed revision, under your promise?

A. No, sir, we parted as I stated, with an assurance of that kind, late in the evening, and they never did complain*t* to us about the rate any more.

Q. How long did you remain on the commission after that rate was put in?

A. That rate was put in April 10th, 1900; I remained on the commission until about February 8th or 10th, 1903.

Q. Were they making you statements of their business while you remained on there?

A. Yes, sir, they made annual statements.

Q. Did you keep informed as to their returns, and form an opinion as to whether they were doing well under the rates?

A. Yes, sir, reasonable so; we had an expert that we de-
2230 pended on very largely, but still we didn't depend altogether on his statements, we investigated ourselves, and it seemed they were making a fair return on their investment; we had their annual returns.

Q. In making these rates, particularly after you got in conference with railroad people, did you have tariffs of other states before you to consider what was being charged under like conditions in other states?

A. Yes, sir, we had collected up that before we invited any conference with them; we had informed ourselves as to the rates prevailing elsewhere.

Q. How did your tariff, as finally promulgated, compare, speaking generally, with tariffs of other states situated similarly with Arkansas, and with about the density of traffic of Arkansas?

A. Well, our rate was a reasonable rate; that is, it was reasonable fair to the people, and we thought to the roads, as compared with that of other rates prevailing in other states; there were states that had lower rates than we put in, eastern states, but we had about as low a rate as any of these western states.

Q. About on a level with them?

A. I think we had a fairer rate than any of them to the people, but still I believe at the same time, it had the possibilities and potentialities of more money to the railroad than any of them.

Q. You thought it would be a better revenue producing tariff than that of the other neighboring states?

A. Yes, sir, I thought it was a better revenue producer,
2231 and better all around, both for the people and for the road, though it was in some respects lower but we found no other neighboring state that had a tariff made strictly on a mileage basis; that is, it was on a mileage basis, but it had its points where they had a right to charge so much differentials, etc., and it was so plain—our idea was that the rate ought to be so plain that just an ordinary man that was unskilled in anything of that sort, ought to be able to take his rate sheet, and see what he wanted to transport, and tell what he was entitled to, tell what the rate was; we claimed that was one of the virtues of our rate,—its simplicity.

Q. How did your rates compare generally with these secret and special rates?

A. Those special rates were much lower than anything we had; all their special rates were lower than our rates. We never got hold of many of their rate sheets; they didn't send them in.

Q. It was only as you learned it in individual cases?

A. Yes, sir.

Q. Do you remember the old distance tariff sheet of the Iron Mountain Railroad?

A. I believe I would know it if I would see it; I remember it was very high.

Q. Wasn't it a very old tariff?

A. I am told it was one of the first sheets that the old Cairo and Fulton, the rate sheet that they had promulgated and handed
2232 down; of course it had been often revised. That is history; I don't know that to be a fact, but I think it was so understood among railroads that that was the old ancient sheet first promulgated by the old Cairo and Fulton Railroad.

Q. You say it was quite high?

A. Yes, sir.

Q. When they applied it to some intermediate point that didn't have a jobbers' rate or local rate, a man operating under that would have to pay a much higher rate than other places?

A. Yes, sir; I don't say it was the first rate or a copy of it; that was the understanding, I think, in railroad circles; I so understood it, and they never denied it.

Q. Would you and your associates upon the commission, while you served there, been ready at any time, if the railroads had shown you that the rate sheet you promulgated was non-compensatory, to revise it so as to give them more revenue?

Question objected to by Mr. Moore, Attorney for the plaintiffs.

A. I could only answer that as I did before, that they never asked it; we assured them that we would, but they never asked it; I think the commission would have done what was just in the premises.

Q. You made that assurance in good faith?

A. Yes, sir, but at the same time, we would have required a showing.

2233 Q. If they had shown you it was non-compensatory, you would have?

A. Yes, sir.

Q. In making these various rates, didn't you have authority in their own rate sheets for more or less of them?

A. There is not a thing in our rate sheets that we didn't find either from their special or general rates; the only thing was that ours was general and theirs was not; that is the difference.

Q. You made yours apply to all alike and they made theirs apply to special interests?

A. Yes, sir, they had much lower rates than anything we published; I don't mean general rates, but considering their special rates; they wouldn't average lower, of course; they would average much higher.

Q. Did you observe the effect of your tariff upon the traffic of the state, as best you could?

A. Yes, sir, it was just like magic on this state; I don't know whether it was due to the rate or not, but something quickened the energies of the people, and our trade centers have been extremely prosperous ever since.

Q. It is your opinion that the discontinuance of that old system and putting in this one, was a factor in that?

A. Certainly, it very largely contributed to it; notwithstanding all the good times we have had, if our trade centers had been sub-

ordinated to these interstate points, they could not possible have developed as they have.

2234 Q. In making these rates, did you take into consideration the length of the haul, in fixing the rate, and graduate the rate accordingly?

A. Yes, sir; I want to say this, that you can only approximate, it is not like a mathematical problem, but you have got to take the data and judge what its influence would be from that; we couldn't figure it out—we thought we were establishing a basis which would make both roads and the country prosper, that the remotest part of the state could develope whatever character of industry they wanted to engage in, and their country was adapted to, that their energies would drift off in that character of production, and it would furnish increased freights to the road, increase their transportation, and at the same time, be good for the country, and everything moving free and easy, and we tried to make it as analogous to nature as possible, letting every man pay for his mileage.

Q. Do you remember a clause that you put in the tariff—I believe it was in the first one—to this effect, that where there was a published rate lower than your tariff rate, that that rate would apply?

A. I don't believe there was any such provision in the tariff, I am not sure.

Q. It is in one of those, judge; I want to call your attention to it; if I remember it correctly it provided that where there was a published rate in force, lower than the rate called for in that tariff, that that published rate would be the rate to control; do you

2235 recall that?

A. It don't occur to me at this time, no, sir; they may have had such a provision, but I cannot imagine a condition to which that applied; under the law, where they had to compete with water transportation, there might have been such a provision or something or other, that they would be allowed, where there was a water rate, they would be allowed to compete with that by reducing the tariff even below anything we had; that is, they might make their own tariff; they couldn't make it higher; they could compete with water rates; I know that was a uniform ruling with the commission; I don't remember whether there was any clause of that kind inserted in the sheets or not.

Q. I will refresh your memory by showing you the tariff when I get it.

A. I think may be that will be found in the rules about water rates, and the right to reduce their rates.

Cross-examination.

By Mr. MOORE:

Q. When were you elected to the commission?
A. I was first appointed.
Q. That is what I mean?
A. I qualified the 11th of March, 1900.
Q. Who were your associates on the commission?

A. Judge Neal and Judge Wells.

2236 Mr. HILL: I think you have your years wrong, Judge?

A. Yes, sir, it was March 11th, 1899.

Mr. MOORE:

Q. When did the commission organize?

A. We organized within a few days after, about eight or ten days, but we were a long time getting on a working basis; that is some time; we had to do a great deal of work before we could take action, more than to require the roads to send in their rate sheets.

Q. When did you get on a working basis?

A. It depends on what you call a working basis, or what I might term it; I will interpret it from my own standpoint; we went to work in a month, but we didn't know anything about rates; we had roads forwarding their rate sheets, and they forwarded everything in compliance with the order, except special rate sheets; I suppose they stopped that, and didn't consider them effective any longer, and we went to work first to arrange it and the organization of a body like that, not having succeeded an organized body, it took some time to arrange it, but we went to work and learned their rate sheets, just as soon as we got thoroughly installed.

Q. How long did it take you to get in their rate sheets?

A. They forwarded them in about ten days after they were ordered, within the time we had given them.

Q. None of the commissioners had any experience in rail-

2237 road matters?

A. None of us, I never had.

Q. You were a practicing lawyer?

A. Yes, sir.

Q. Didn't you say Judge Neal was also a member?

A. Yes, sir.

Q. He was also a lawyer?

A. Yes, sir.

Q. Who was the other member?

A. Judge Wells, a practicing lawyer.

Q. None of you had much experience as shippers?

A. None of us had been very large shippers over the road, just occasional shippers, I suppose.

Q. So it was an entirely new chapter in the experience of all of you?

A. Yes, sir.

Q. When did you get our your first tentative tariff?

A. I think that was about the latter part of January; it might have been some time about the 1st of February.

Q. That is 1900?

A. Yes, sir, nearly a year after our appointment.

Q. What data did you use in preparing your first tentative tariff?

A. We ordered the rate clerk to prepare a tentative tariff and we trusted that largely to him, although we had discussions all along;

Judge Neal, in the meantime, had retired from the commission, and Judge Hanley had succeeded him.

2238 Q. At what time did Judge Neal retire from the commission?

A. I think he retired some time recently before Christmas of the year he went on.

Q. Judge Hanley was then appointed about the last of the year 1899?

A. Yes, sir.

Q. I think I interrupted your statement as to the data upon which you formed your first tentative tariff?

A. We had all been studying; we had got the rate sheets of other states, Texas, Georgia and all of the surrounding states; we had all been laboring, but we had employed a man that we regarded as possessing some skill; we deferred largely to him; he prepared this tentative sheet; that tentative sheet was prepared more for the purpose of bringing the commission and the roads together, meeting face to face, and discussing the question; it was really not intended at the time, to make that effective, unless, after discussion and consideration, and having the benefits of what information we could receive from the railroads, we found it to be just, but I don't think any of us thought that that would be promulgated.

Q. Your conference with the representatives of the various railroads in the state began after the first tentative tariff sheet was prepared?

A. Yes, with respect to the promulgation of this rate now effective, although we had more or less conferences but not invited; railroad men were visiting the office all the time, and rates had been discussed with them, but not in invited conferences pre-

2239 viously.

Q. When did the conferences begin, about what time?

A. I think it was in February, my recollection is; of course, we get mixed up on dates sometime,—that this tentative sheet was sent out about the latter part of January, and it was something like 20 or 25 days perhaps before we gave notices that we would promulgate it; that led to conferences, conference after conference; in fact some of the railroad rate men was in nearly every day, and along the latter part, they would all come every day, in many instances.

Q. You had gotten in pretty much all the rate sheets, had you?

A. We got the rate sheets in recently after we qualified; the roads responded by sending them in when we notified them; we had learned what their rates were.

Q. You stated, if I understood you correctly awhile ago, that you didn't get some—perhaps you said many—of these special rate sheets? Now, I want to call your attention to a statement made in the affidavit which you filed in the hearing before Judge Trieber, and for the purpose of asking you if you cannot be mistaken in the statement you just made; you said in that affidavit "during all this time we were at work; we had their rate sheets; what they didn't furnish us with, we managed to get; we got pretty nearly all they

had, both special and general." I am reading that for the purpose of calling your attention to it, and to ask you to reflect a
2240 moment and tell us what your recollection is?

A. That statement there is true; what I meant in that statement is, that what we didn't get from the roads themselves, we got from others; those special rates ordinarily they came to light by complaints of shippers.

Q. And you did, in fact, get pretty much all the special rate sheets?

A. Yes, sir, but we didn't get them from the railroads; they sent in some; my recollection is that worked out a discrimination, but ordinarily, we got them from the shippers, or from other sources than from the roads.

Q. I believe you said you also examined rates in effect in other states, both east and west? Those surrounding Arkansas?

A. Yes.

Q. And I believe you stated while your rates were higher than some of the eastern states, they were lower than some of the surrounding states?

A. Yes, sir, I think they would have averaged lower than some, and higher than some; I can't say that we put in the lowest rate; I don't think we did, nor can I say; I can say this though, that our rate was a better rate, in my opinion, and in the opinion of the commission, than any of these states, although they might average higher than any of these states, but at the same time, I think the surrounding states would average higher than ours.

2241 Q. In what respect did you think the rate prescribed by your commission was superior to rates in surrounding states?

A. Its simplicity was one thing; any unlettered man, any man that could read, could tell the rate and then it moved everything strictly on the mileage basis; in other states, there was some more or less confusion to a man who didn't understand rates, about how to figure out their rates.

Q. Was the old system observed by your successors?

A. Yes, sir, I think so.

Q. Have you followed that up so you know?

A. No, sir, I didn't; I started in, after I left the Commission to keep up with it, but somehow or other, I failed to receive the literature after a year or so, and I haven't kept in touch with it.

Q. Have you observed the joint rates that were put in by the commission after they were empowered by supplemental statute to put in joint rates, and its effect upon your mileage scale?

A. No, sir, we had no power ourselves to make joint rates. The legislature gave them the power subsequent, to make joint rates.

Q. You have already stated that the members of the committee were all inexperienced in transportation matters; it is true, isn't it, that you had great difficulty in your investigation of this subject of arriving at results that were satisfactory to yourselves, on
2242 account of your inexperience?

A. Most assuredly, yes, sir.

Q. You found, didn't you, that it was a vast subject, one that re-

quired a great deal of practice and experience to enable a man to understand it properly, did you not?

A. Yes, sir.

Q. Let me ask you if the tariffs you put into effect on the 10th of April, 1900 was entirely satisfactory to the Commission, and if you didn't feel some doubt about how it would operate, growing out of your inexperience in that kind of work?

A. Well, we didn't know how it would work; we thought it was a good rate, and from the fact that we parted with the railroads, with assurances that if it didn't make money for them, to come back, we were ready to hear their complaints, and they never returned, and from the fact that it seemed to stimulate all of the industries of the state, we concluded it was a good rate; by subsequent events, it seemed to demonstrate that it was a good rate.

Q. You stated you prescribed a fairer rate for the people than any of the surrounding states had, what do you mean by that statement?

A. I stated, in my opinion, we had the best rate.

Q. The point I want to call your attention to, is what do you mean by stating "a fairer rate to the people?"

A. I meant by that, that it was not very much lower than
2243 others or that its effect was such as to put the people of all parts of the state on one common equality; if it didn't operate to lower the rate, that it nearly equalized it, and put every man upon his merits with reference to every other shipper in the state, more than any other tariff that I know of.

Q. I understood from the testimony of Mr. Bragg who was on the stand a few days ago, and I understood that to be the drift of your statements, that the tariffs you found in existence at the time you organized the commission recognized jobbing centers, and a great many special rates were given from jobbing centers to outside territory; that is to say, territory that was tributary to different trade centers of the state, is that correct?

A. Not our tariff.

Q. You don't understand me; I say—I am speaking of the railroad tariffs that you found in existence——

A. Yes, sir, that was practiced very largely; my recollection is on the Cotton Belt principally; they all recognized the jobbing points more or less, but they also had in effect at some places, what was called jobbers' rates.

Q. What were those?

A. As I explained awhile ago, that was a much lower rate than the distance tariff from the jobbing point, to *to* the outlying posts.

Q. Now, to illustrate what I mean, take Little Rock as
2244 an instance; Little Rock was the center of a trading district which was tributary to it; when you speak of jobbing rates, you speak of favorable rates that were given to Little Rock, within the territory that traded there; do I understand you correctly, as meaning that?

A. State that question again.

Q. Assume that Little Rock was a jobbing center——

A. Yes, it was.

Q. I understand that these special jobbing rates you speak of, were such as included jobbers, merchants in Little Rock, and permitted them to ship their goods out within the territory that traded at Little Rock, at a lower rate than their mileage rate or that people in the country could get in shipping back to Little Rock?

A. Yes, it was a lower rate, a much lower rate than the distance tariff; in fact, it belonged to that species of rate called combination of rates; for instance to illustrate, the rate from St. Louis to Little Rock is so much, say 20 cents per hundred; then you want to ship out of Arkadelphia; they give the rate through then, they take the combination of the rate from St. Louis to Arkadelphia, and the rate from St. Louis here, and this jobbers' rate is made up more of the combination; of course, something is allowed I suppose, for loading and unloading.

Q. What jobbers' rate do you refer to?

A. I am speaking of the jobbers' rate and not the local

2245 rate.

Q. You are speaking of the jobbers' rate out of Little Rock to Arkadelphia?

A. Yes, sir, it wasn't a to and fro rate.

Q. Well, it was the same from Little Rock to Arkadelphia or Malvern or Benton, or any points within the territory?

A. Yes, sir.

Q. And the same from Pine Bluff to points tributary to that?

A. Yes, sir.

Q. Those rates were lower than the regular rates?

A. Yes, sir.

Q. Why were these jobbing centers favored in that way?

A. I didn't have a very serious objection to the jobbers' rate; I never thought there was; it was fairer than the local, because it consisted of a combination of the through rate, and if they had observed that all over the state, but they didn't do that, it was the most favored points where that was done.

Q. What were the jobbing centers of this state at the time commission was organized?

A. We called a jobbing point any place where they did a wholesale business.

Q. I wish you would designate what were the jobbing centers at that time; Mr. Bragg named them as Little Rock, Van Buren, Pine Bluff, Texarkana, and possibly Camden?

A. That is correct.

2246 Q. That is about five jobbing centers; did this system of jobbing rates prevail at these several points, under the railroad tariffs that were in existence when your commission was organized?

A. You mean did jobbers' rates prevail at all these points?

Q. Yes?

A. I don't think it did, although to some extent it did.

Q. I think your testimony in that respect is different from Mr. Bragg's. Mr. Bragg testified that there were jobbing rates going to these different trade points?

A. I only said if all jobbing points in the state had it, I don't think they did, I think the shippers, particularly jobbers, at each point had it, wherever they had a favored shipper, they would give him the best rate they had.

Q. These jobbing rates had a tendency to build up trade centers in the state,—jobbing centers?

A. Yes, it put them on an equality with interstate points; there was a slight difference, slightly more than if they had bought it in the first place from St. Louis.

Q. The reason I am leading up to, I understood you to state on your examination in chief, that through the operation of these general and special tariffs, that railroads had in force before the commission was organized, it paralyzed business and kept trade centers from being built up in cities of the state; I don't think that was your language, but that was the effect of what you said,
2247 as I understood it; am I correct in this?

A. Yes, sir, these jobbers' rates, the commission would not have complained of if they were general; some points were favored more than others.

Q. Weren't there jobbing rates to certain points and certain special rates given to favored individuals, which you denominated discrimination?

A. Yes, sir, they had a jobbers' rate locally, that was a to and fro rate, but the regular jobbers' rate is a rate out from the jobbing center; that is my understanding; it wasn't given to all the jobbers, and thereby worked a discrimination.

Q. Now, your commission had no jurisdiction to regulate rates into jobbing points from other states?

A. We could influence them, but not regulate them.

Q. In what way could you influence them?

A. We could influence them in this way,—that would be hard to explain, but interstate rates are influenced more or less by local rates; for instance, rates consist of a combination of the locals; in interstate commerce, the through rate cannot be higher than the combination of the locals; freight rates are lowered here and that cuts down the combination of the locals, and in that way it influences interstate rates, especially inbound rates.

Q. Why do you say that the through rate, the interstate rate, cannot be higher than the combination of the locals?

2248 A. That is a rule of rate making, and it is based on the long and short haul clause of the interstate commerce law.

Q. Would such a rule as that be impractical to operate under a different rule from that, I mean from a business standpoint, I want to understand——

A. I am inclined to think that if the through rate was higher than the combination of the locals, it would be a discrimination.

Q. At any rate, it is your understanding that the rates prescribed by your commission, did in fact influence interstate rates?

A. I think so.

Q. Did you ever give any attention to that matter?

A. No, sir, I never thought anything in that line?

Q. In observing the tariff put in by the commission, did you notice it had any such effect as that?

A. I don't know that I did.

Q. You said awhile ago, that your impression was that many special rates were lower than the rates prescribed by the commission; I want to call your attention to a provision contained in the standard freight distance tariff, promulgated by your commission at the date you mentioned, April 10th, 1900, on page 14, to the effect that when class rates, carloads and less than carloads and commodities carloads and less than carloads, now in effect from jobbing centers to local points, and between jobbing points and other points
2249 in the state are lower than the rates prescribed in this tariff, such lower rates shall govern; didn't that have the effect to give the shipper the benefit of the lowest rate?

A. Yes, sir, I think so.

Q. I believe railroad companies, each of them published their own tariff, based on a copy of the tariff promulgated by the commission, when the commission rates went into effect?

A. Yes, furnished their own rate sheets.

Q. Yes, they printed their rates for themselves?

A. Yes; I am not sure about that, but I am inclined to think they did.

Q. For the purpose of refreshing your memory, and calling the matter to your attention, I want to hand you copy of your tariff, which was printed and put into effect by the St. Louis Southwestern Railroad Co., which contains on it, stamped on it in red letters, in effect a protest; it is a statement that the rates are put in under protest, and with reservation of the right to contest them; I do that for the purpose of asking you——

A. That is a fact; it was understood they went in under protest; that was understood by all the roads; I say with all the roads; I know it was with the Iron Mountain and Cotton Belt, and we told them it was so understood with all; I don't think that the other roads especially reserved the right, but it was understood by the commission that they were going in under protest, but I
2250 think the Cotton Belt and Iron Mountain especially reserved in the face of the rate sheet here, their protest.

Q. In preparing your schedule of rates, did you make any investigation as to the cost of service and operating trains?

A. Yes, we considered that the best we could. We found out this, that nothing but actual tests will demonstrate a rate at last; that railroads themselves cannot sit down and figure by any rule, they can approximate but they cannot figure out what would be just the rate, but they simply put in a rate and apply it, and if they don't make money on it, they take it out and keep putting in higher rates until they get one by which they can make money; there is a great deal of speculation; of course, men sitting down here, it is all well enough to consider all these things and they do, but then at last, that is the test.

Q. Did the commission and did you, who were the members of it,

give any recognition to the principal that the cost of service should be considered and recognized in preparing rates?

A. Yes, sir, and we were going to do just like the railroads, if it didn't make the money, we were going to take it out and put in one that would make money, a reasonable profit—a reasonable return.

Q. Did you discuss the proposition of the cost with the railroad people?

A. Not so much with the railroad people; we had reports there, had them all complied, what other roads cost, and their
2251 traffic, the value of it, and all that sort of thing, and they entered materially into the consideration in establishing freight rates, but from that, we could not have taken it and figured out just what would have been six — interest on their investment or anything of that sort; we thought from all the information before us, that we were putting in a fair and reasonable rate, one that was just to the roads, and also one that was just to shippers; we considered those things.

Q. In considering the subject referred to in your last answer, that is the cost or expense of operating trains, and what would be a fair return, did you have in mind what is cost railroads to procure material and labor, and essentials of that kind, that entered into the operation of trains and the maintenance of the road?

A. Yes, sir, we investigated all that; we got first, the capacity of the cars, the minimum capacity, and what it would cost per mile to run a train; how much it cost to start up and how much it cost each mile; I did know just what it cost to operate a road per mile after it was started, after steam was raised; we had that up; I don't know whether it was preserved or not; estimating the cost and tonnage, number of cars in the train, and what the average tonnage was, that depends of course upon the character of freight itself; some freight is bulky in proportion to weight, while other freight is very weighty in proportion to bulk, but when we took charge, I believe the minimum weight of a car was 24,000 lbs., and we
2252 figured on that basis largely. We figured all those things out, and the cost of operating trains, and on the minimum basis of what they would haul, and also the differences between the cost of a through train, and what you call a train handling pound freight, set-out and set-in freight and local freight, but after we had figured on it all, of course, we couldn't, with mathematical certainty, fix a rate that we could say would be compensatory. We were influenced by many things, and at last, we had to trust largely to experience, to actual test, actual application of our rate, and just as I said awhile ago. I found out that was the way railroads made rates; they put in rates, they applied them, if they didn't make money, they took it down, and put in another, and so on until it did yield a revenue.

Q. What investigation, if any, did you make as to the value of the property, in determining what you thought would be a fair return in the way of compensation?

A. We didn't make any estimate further than that furnished by

the railroads themselves; we included all betterments down to that time, cost of their road; we had no experts, the state didn't furnish us any; we had no money, and it was not practical for us to enter into that inquiry very extensively.

Q. Did you establish any basis as to what would be a fair compensation with reference to the investment, and what the property represents?

A. Well now, there was the Cotton Belt for instance; my
2253 recollection is it had its road down to $86,000 a mile, and the Iron Mountain about 56.

Q. I am not speaking about that; upon what basis of profit or earning, did you assume a fair compensation or return could be made, in the way of percents, say two or three, or four or five or six per cent on the investment represented by the property; what do you consider would be a fair return in the way of profit in per cent?

A. We had to consider what their indebtedness was, of course, and the value of stocks and bonds, and we thought that our tariff would yield a reasonable return.

Q. What did you consider at that time would be a reasonable return on the value of the property?

A. I don't know that we had any discussion among ourselves about any particular figure that it ought to be, but we believed that the tariff was not only a fair compensation for the service, but also, it was a reasonably fair return on the investment; just as I have said, we had no way of arriving at a mathematical certainty in that regard.

Q. What, in the view of the members of the commission, would have been a reasonable return in the way of interest on their money?

A. I would have thought it ought to have been legal interest at least?

Q. That is 6%?

A. Yes, sir, although I believe the courts have held that it must be some return; I don't believe they have said how much it
2254 is; I wouldn't want to be put in the attitude of saying that was right, but my idea is that a man for a large investment, with a return at a low rate on a very large investment——

Q. What I want to get at was the idea of the commission at that time, the idea upon which they acted at that time; in estimating on the rates, whether it ought to be five or six per cent?

A. We didn't figure on that; we thought it would be a reasonable fair return.

Q. I reckon you were pretty careful so as not to make your rates so they would make more than a reasonably fair return?

A. We thought we were pretty liberal; we gave the benefit of the doubt to the railroads.

Q. Have you kept yourself informed as to the relative costs of operating railroads in 1900, with what it is now, that is, the changes that have taken place in the prices of those things that enter into the operation of a railroad; that is the material that enters into the maintenance and betterments, that enter into the operation of a railroad, and the labor?

A. It is very much greater, I know; I have not had any occasion

to think very much about it; I know that everything is very much more costly,—labor is almost double what it was.

Q. The cost of living is very much higher?

A. Yes, sir, the cost of everything is higher; everything
2255 that enters into a railroad, as well as labor; all material has increased in price.

Q. That is true of nearly all industries and manufacturing concerns in the country?

A. No question about that.

Q. Isn't it true, don't you know as a matter of general intelligence and public information, that all the manufacturing and industrial concerns in the country have been obliged to raise the prices of their product and their output, on account of the increase in the expense of manufacturing, growing out of the higher prices?

A. I know that as a matter of general information, yes, sir.

Q. If that is true with other industries, would it not be fair and proper that railroads should be allowed to increase their rates, if the cost of producing the service has increased in proportion to other industries?

A. Most assuredly; I don't think there is any doubt about that

Q. The rule would apply to all industries alike?

A. Yes, sir, but you have got to consider this; now, as the prosperity of the country increases, and the latent energies of the country are roused and resuscitated, that it very materially increases the amount of traffic.

Q. Isn't the effect of that though, if the rates are insufficient, to increase the loss that will grow out of operating at insufficient rates?

A. Yes.

2256 Q. And still on the other hand, it would increase the profit, if the rates were fair and reasonable?

A. Yes, sir.

Q. In that same connection, isn't it a fact, isn't it an axiom that the growth in volume of business isn't profitable unless there is an equivalent growth in the prices that are charged for the output of that business?

A. I think there ought to be some increase in the compensation; that would be my idea, although a part of that increase, as I have just stated, is made up by the increased volume of business, there ought to be some increase.

Q. It is a rule that works both ways, that an increase in production, without a fair and ratable increase in the compensation, would be a misfortune; that is an axiom that you recognize as true?

A. Yes, sir.

Q. And it applies to railroads as to anybody else?

A. Yes, sir, railroads are entitled to share in the prosperity of the country the same as individuals, and ought to share slightly in its diversities.

Q. I want to ask you this question, and I ask it because I want to get your views on that subject, in view of the condition of prices of everything that enters into the construction, operation and main-

tenance of railroads; now, do you believe a rate that would be fair in 1900 would be fair today on the railroads in Arkansas?

A. I am inclined to think that it is more than likely
2257 that the road would be entitled to some increase; however, as I stated awhile ago, they are compensated in the way of an increase in the volume of their business, but still—I will say yes, I think they are entitled to some increase, but I won't undertake to say how much.

Redirect examination.

By Mr. HILL:

Q. Hasn't the capacity of cars increased very largely since 1900?
A. I think so; you mean the carriage capacity?
Q. Yes, sir?
A. Yes, sir.
Q. Very largely?
A. Yes, sir.
Q. Hasn't the power of the locomotives increased very largely?
A. In proportion, I suppose.
Q. Haven't railroads spent a great deal of money in Arkansas in reducing grades and taking out curves?
A. Yes, sir, that is my observation; that is, up this road I live on; I haven't been on any other, in many other parts of the state
Q. Those facts all tend to less the cost of traffic, do they not?
A. Yes, sir, most assuredly; there is a large outlay, however, to make those improvements, but they certainly tend to decrease the cost of carriage.
2258 Q. And of course, you would have a return upon that outlay?
A. Yes, sir.
Q. When you put in this commission tariff in 1900, I suppose engines were very much smaller than they are now, and freight trains very much less in number of cars carried?
A. Yes, sir, I think so; in fact, I know so; that is according to the capacity of the car, very much increased.
Q. Now, when the density of traffic increases, to which you have referred awhile ago, doesn't that lessen the cost proportionately?
A. Well, it lessens the cost; I can't say that it would raise it up to a given increase; it is hard to figure on these things.
Q. Take for instance in 1900, that a freight train drawing 15 cars, that was all the load it had, and it served to carry all the traffic of that day upon its run, and today that engine would be carrying 30 or 35 cars, on account of the increased volume of the traffic, and those cars would be very much larger than they were then, wouldn't the cost of that transportation be lessened by reason of those facts?
A. Compared with the amount, it would be very much lessened.
Q. Per ton per mile, reduced to that basis.
A. Yes, per ton.
Q. When you consider whether the rate should be higher or lower

than it was in 1900, on account of the increase in *in* wages
2259 and material and various other matters, you have mentioned, you should also consider whether or not this increased traffic and increased minimum in hauling that traffic, hasn't counter-balanced that, should you not?

A. Yes, sir, but you have to take into consideration also in getting at a basis, the increase in price as well, material and labor and everything of that sort.

Q. On the other side, are these other things and probably many more than I have mentioned?

A. Yes, sir, there are many things to be taken into consideration; all we know today is it is increased, but it would take a very thorough expert to figure out what ought to be the increase, and what is the increase in the cost.

Q. And in adjusting rates, those two effects should be taken carefully into consideration?

A. Yes, sir.

Q. If a railroad was making all of its fixed charges, paying 6% interest on a very large bonded indebtedness much larger than its assessed valuation, and paying 10% annual dividends upon a very large capitalization, very much larger than its assessed valuation, would you think that road needed any increase of rates?

A. I would not think so, no, sir.

Recross-examination.

By Mr. MOORE:

2260 Q. Judge Hill called your attention to large expenditures which were made, which resulted in increased facilities, made by railroads in conducting their business; you would say, wouldn't you, that railroads were entitled to a fair return on the additional investment that is represented by those additional matters?

A. Yes, sir.

Q. It is evidence in this case, that there has been really millions of dollars spent on these railroads, and that no doubt those improvements have increased the efficiency of the properties, but it would be a very unjust rule not to allow them a fair return on the money invested?

A. Yes, sir, they ought to have a return on the betterments, of course.

Q. Another thing, there are two sides to every question; your attention was called to the enlarged capacity of locomotives; it is a fact that it does not require an expert to know, that as you increase the size and capacity of locomotives, that you increase the cost of operating them,—fuel and water, etc.

A. Yes, sir, it might not be in proportion, but it would increase it some.

Q. Your attention has been called to the fact of the enlarged capacity of cars; now it is in evidence in this case, that every car, large or small, is what is called dead weight; it is non-remunerative;

it is hauled frequently empty; every car is a certain weight,
2261 independent of its remunerative tonnage; all that is included in dead weight; now, as you increase the capacity and the size and the value of cars, the cost of dead weight and the cost of hauling them empty is increased to some extent?

A. Yes, sir.

Q. You consider it fair to take all those and many others that I shall not enumerate into consideration?

A. Yes, sir.

2262 W. E. FLOYD, being first duly sworn and examined, deposed as follows:

Direct examination.

By Mr. HILL:

Q. State your name, residence and occupation?

A. W. E. Floyd, secretary of the railroad commission, Little Rock.

Q. Have you custody of the records of the Railroad Commission?

A. I have.

Q. I had Mr. Swaim to put in evidence in his testimony statements from the records of the Railroad Commission of various changes that had been made by the Railroad Commission between July, 1903 and September, 1908, which reduced or tended to reduce the freight rates,—revenue—I have asked you to prepare data from the records of the commission of various petitions that were presented to the railroad commission, within that time, which did not result in reducing the rates; I ask you if you have prepared that?

A. Yes, sir, I have.

The statement containing summary of the orders is hereto attached as a part of this deposition, and marked Exhibit "D", and the summary is herein accepted by the plaintiffs, the same as if the original records were copied, subject to all objections as to competency and relevancy?

For Exhibit "D", see Volume 9, page 5772.

2263 J. G. WALLACE, being recalled, deposed as follows:

Direct examination.

By Mr. HILL:

Q. You stated to me this morning that you wanted to correct a statement that you made yesterday, and I would be glad to give you an opportunity to do so? What was the matter?

A. Mr. Moore asked me the following question yesterday; in substance: Does the intrastate rate influence the interstate, or does the interstate or intrastate rate—does it influence the interstate rate, and if so, how? I did not understand, my hearing is not very acute, I did not fully comprehend the question; I got started off wrong and got confused, and got mixed up with the long haul, and I wanted an opportunity to answer that question, to correct my answer this

morning. My answer is yes, it may in some instances do so; to illustrate, prior to the promulgation of the commission's tariff, the Frisco Railroad had interstate rates effective at stations in Arkansas, north of Ft. Smith; that is on its line north of Fort Smith, with which the Ft. Smith jobbers could not compete; it gave the Missouri points practically a monopoly of that trade, or at least it was so represented to the commission. The effect was to give the
2264 trade to Missouri points, and stations on the line of the Frisco, north of Ft. Smith; as a consequence, the Commission's tariff had the effect—its local rate which was effective anywhere in Arkansas,—had the effect to just reverse the order of things, and transfer that trade at all stations north of the line practically to Ft. Smith, and then, of course, the Frisco would have had to lower its rate from St. Louis and other interstate points in Missouri, north of the Arkansas line, in order to have enabled those interstate merchants,—that is, interstate as to us, to compete with the Ft. Smith jobbers; now, the same condition of things was applicable in some instances, as to a portion of the traffic of all through long line roads. The effect of it would be, of course, not necessarily as I understand it, reducing their revenues or income, but lowering the rate so as to give Arkansas competitors, as to all that traffic an advantage, while between Fort Smith and north of the Arkansas Line——

Q. If I understand you correctly, it is about this, that in certain trade centers; the intrastate rate will influence the interstate rate, but it is not necessarily a reduction, but a readjustment of the revenue, whether it shall be intrastate or interstate; is that the idea that I gather from you?

A. It is not necessarily a reduction; it is a reduction of the rate, it is not necessarily any encroachment upon the revenues;
2265 they might make more money as a consequence, or they might lose.

Q. It amounts to this, that whatever influence an intrastate rate may have upon an interstate rate, it is an influence in the distribution or re-distribution of the revenue, rather than a change of the revenue itself?

A. Yes, sir, a legitimate distribution of the burdens of transportation, which we all have to bear more or less.

Q. There was one question I wanted to ask you yesterday, and forgot it, and that is, whether this clause in your tariff, requiring the lower rate to be taken where there was a lower rate prevailing, had the effect or was intended to have the effect of continuing the special rates and jobbers' rates of various kinds that had been in effect before the commission tariff was promulgated?

A. I have not looked at the tariff for a long time, in a good many years, have not refreshed my memory; I should have before coming here to testify, but have not, but I can state in most unqualified terms, that no road, neither did any road so understand it, that they could vary their rates from those rates, only where the circumstances were exceptional; now, if there was water competition, they were at liberty to adopt the water rate to compete with it, but if they adopted

it as to one shipper, they must adopt it as to all, and where there were competing lines, take Fort Smith, there is two roads leading
2266 from Fort Smith to this point; the long line road might adopt the short line mileage, and again, occasionally there was a man that wanted to move, change his place of residence forty or fifty miles, and he had a cow and a horse that he wanted to take, and he could load his chattels, and if he didn't have enough for a carload, didn't justify him to get a car, why that we considered to be, we found decisions in exceptional cases, and allowed the road to give its own rate, with the condition, however, always that they gave everybody under like circumstances, and similarly situated, the same rate.

Q. That was intended and was not construed by the railroads, as a continuation of any of the special rates or jobbers' rates, or local rates?

A. No, sir, not at all; I don't think a railroad man so understood it; I never heard of such a construction being put upon it.

Cross-examination.

By Mr. MOORE:

Q. After Mr. Hampton became a member of the commission the shippers and jobbers of Texarkana made an application to the railroad commission to reduce the rate on sugar by putting in a maximum rate for 300 miles, reducing it to 13 cents,—it had previously been 15 cents—the Texarkana merchants were com-
2267 plaining of the rate to New Orleans; that rate had been fixed by the Kansas City Southern Road, which was the most direct route shipping by Shreveport from New Orleans to Texarkana, in order to accom-odate those merchants the commission did make a reduction of the maximum rate on sugar in this state, of two cents a hundred, reducing it from 15 to 13 cents; Mr. Hampton made a statement that there was no traffic in this state on sugar, originating in Helena, but it came from other points outside of the state; the object of making that rate was to influence the interstate rate and bring it down, and it did have that effect, because the rate from New Orleans to Helena was 10 cents; under their order from Helena to Texarkana, it was 13 cents, the sum of the locals being 23 cents and did have the effect of reducing the rate from New Orleans to Texarkana on the Kansas City Southern from 25 to 23 cents; that illustrates, doesn't it, the manner in which the reduction of intrastate rates affects interstate rates?

A. Yes, that is true, but then a shipper may always take advantage by reconsignment, etc., and avail himself of the lowest rate.

Q. That is the reason the sum of the locals controls?

A. Yes, we had some trouble on that line, before I went off the commission; we never could get the Texarkana people—that happened after I went off the commission, Mr. Hampton you
2268 stated was on the commission after I went off—we tried to effect that arrangement before I went off the commission; we couldn't handle the Iron Mountain; they had been shipping heretofore, and reconsigning from Helena, but I believe there was no com-

petition with the Iron Mountain at Helena, and from some cause or other, if it had competition, we couldn't get it to compete with it on that line, so we considered that legitimate for the shipper to avail himself of the lowest rate, and he might, by taking the combination of the locals, get a lower rate than the through rate in some instances; ordinarily, such would not be the result.

Redirect examination.

By Mr. HILL:

Q. You say you tried to effect that sugar readjustment, did you think that the rate to Texarkana was too high? Was that the cause of it?

A. Yes, we tried to effect it to the Texarkana market also; we thought the sugar rate in here was too high, and naturally, we tried to effect the very arrangement that I suppose was afterwards effected by Mr. Hampton, after he came on the commission.

Q. Didn't you find the sugar rate operating very unequally in different parts of the state?

A. Yes, sir.

Q. And it was to correct that inequality, as well as to
2269 get a better rate, that you were anxious to effect that readjustment?

A. Yes, sir.

2270 J. D. WATSON, being recalled for the defendant, deposed as follows:

Direct examination.

By Mr. HILL:

Q. Have you, since I requested it, examined the various interstate tariffs that were promulgated by your road since the injunction became effective Nov. 2nd, 1908?

A. I have.

Q. Can you state generally what changes have been made in the interstate rates, since November 2nd, 1908?

A. The interstate rates to the State of Arkansas, as a whole, have been changed to the extent of eliminating the less than carload commodity rates, which were in effect within the state, prior to the date of the injunction.

Q. When was that made effective, the change that you are referring to?

A. From St. Louis to points in Arkansas, it was effective on our line February 1st, 1909.

Q. Was that the first change that was made in the interstate rates after Nov. 2nd, 1908?

A. It was the first change to local points, not the first change to common points.

Q. When did you make your first change to common points, after November 2nd?

A. Effective Nov. 29, 1908.

Q. That was the date of the changes to common points,
2271 was it?

A. Yes, sir. Now, that is not a general change; you asked for the first change.

Q. Was that a change of any considerable extent, I am speaking generally, of the volume of the traffic?

A. No.

Q. Was the change of February 1st of any general extent?

A. The first change of any general extent to common points was effective Dec. 30; the first change made to local points was effective on our line, Feby. 1st.

Q. Now, were there any other changes,—that is changes of moment—I do not want to go into any small details, up to June 1st, 1909?

A. To common points, yes; for local points, no.

Q. When was the change to common points after that, of any extent?

A. The changes were being made just as fast as the supplements could be issued, and there was a supplement issued every thirty days, starting in on Nov. 29th, 1908, and every thirty days up to that time, up to date, and they are still being made.

Q. That is the common practice at all times?

A. Yes, sir, the changes in this supplement are incident to changes in state adjustment, as they are found, and as they are checked; there are many thousands of these rates.

Q. Now, I wish you would approximate, if you can, the extent of the changes as affecting the volume of traffic, from Nov.
2272 2nd to June 1st, 1909? How much of the volume of the traffic was affected by these changes?

A. It would be impossible for me to give you a definite percentage of the volume, but I can say, in a general way, a large volume.

Q. You could not give any approximation?

A. No, it would be impossible; I might explain the reason why; I cannot give you that statement; the volume of traffic, less than carload, as compared with the carload tonnage, is a very hard factor to determine. The less than carloads are affected, and some carloads; the majority of the rates that were affected were less than carloads, to local points.

Q. Then, your changes of the rates from Nov. 2nd to June 1st, were principally of the L. C. L. rates?

A. Yes, sir.

Q. There was no material change, during that period, in the carload rates; that is, material as affecting the volume of your traffic?

A. I couldn't answer that without checking the record, to determine that definitely.

Q. After June 1st, for six months say, what was the extent of the changes in the interstate rates?

A. I believe that from June 1st, for the following six months, from June 1st, 1909, for the following six months, the changes were as much or more than for the preceding six months.

Q. Were the changes from June 1st, for the ensuing six
2273 months, reductions or increases, generally speaking?

A. The majority of them were increases.

Q. Were there any reductions of any moment, from June 1st, 1909 to January 1st, 1910?

A. I don't know what you mean by "any moment;" reductions were made where it was found that some error had been made in readjusting the rates to the new conditions.

Q. That would be of some detail; I mean anything that would materially affect the revenue of your road?

A. I don't believe so.

Q. Before the injunction became effective, was there an effort made to adjust the interstate rates to the proposed intrastate rates that were put out by the railroads?

A. The time was too short to accomplish the changes incident to the new adjustment, but an effort was made.

Q. Do you know Mr. E. K. Vorhees?

A. I do.

Q. What position does he occupy?

A. General Freight agent of the Frisco system.

Q. I want to read you a statement from an affidavit filed by him in this court, on motion to modify the injunction in this case:

"Affiant further states that he was directed and instructed to co-operate with the officials of other Arkansas railroads, and to discuss and consider with them in conference, a schedule of rates that should be operative within the State of Arkansas, in lieu
2274 of said Standard Freight Distance Tariff #3. Affiant states that early in September, 1908, he met representatives of every traffic department of other railroads operating in the state, in conference, and the said conference remained in session about fifteen days, and as a result, the representatives of each line recommended to his company the adoption of a schedule of changes to apply within the State of Arkansas, in place of said Standard Freight Distance Tariff #3. Affiant states that the chief traffic officials of the lines named, gave careful consideration to the schedule that was recommended, and that before any schedule was adopted and published by the several lines, conferences were held with a large number of Arkansas shippers who would be affected by the changes of rates, and also with the railroad commission of Arkansas; that all objections from all said shippers and receivers, or the railroad commission of Arkansas, were given due and proper consideration, and a number of modifications were made in the rates first recommended, before they were afterward made effective by the several railroads, on Nov. 2nd, 1908. Affiant states that the representatives of the several lines discuss- and considered the relations which should exist between the several class rates, and after much study and comparison with the rates in other states, and the class rates applying on inter-state traffic in various portions of the territory west of the
2275 Mississippi River, and other elements affecting the fixing of class rates; it was decided to recommend that the various

classes should bear the following relation to each other," and then it sets forth the tabulation, which I will omit:

"Affiant represents that this decision was reached only after full discussion by representatives of the several lines, and that such recommendation was adopted by the chief traffic officials of the several railroad companies only after careful consideration, and affiant says that the relation of class rates resulting from the application of this principle, is fair and reasonable and just, as applied to traffic within the State of Arkansas."

Were you present at this conference to which Mr. Vorhees is referring?

A. I was.

Q. Is this a correct statement of what took place in this conference?

A. Yes, without the detail.

Q. Did you, in this conference, consider the interstate rates as well as the intrastate rates, when you were fixing the tariff which became effective Nov. 2nd?

A. We did.

Q. Did you attempt to adjust the relation that should be obtained between the state and interstate rates, in this conference?

2276 A. We cerainly did.

Q. The interstate tariff which was issued by your company in November or December, attempted to reflect the interstate rates as readjusted to the state rates, which you made effective Nov. 2nd, wasn't it?

A. As far as was possible to do so, yes; it is impracticable to adjust rates with only one factor, that factor being the state rate; there are a great many other considerations that move the adjustment of interstate rates; the state rate is one of them.

Q. What are the other considerations?

A. Commercial conditions; the long and short haul, the competition; that is a few of them.

Q. Explain just what effect the long and short haul would have in this connection?

A. It would be rather difficult to establish a higher rate for a short haul than for a long haul; if you operate the short haul upon a lower rate than the long haul, or if the long haul point happens to be reached by the short haul road, making it a short haul by one line and a long haul by another line, that makes quite a difference.

Q. That brings the proposition back to short line competition?

A. No, it brings the proposition back to conditions which are governed by the situation or location of railroads, the point of origin and point of destination.

Q. There were no changes in the location of your railroads between Nov. 2nd and June 1st, were there?

2277 A. You have evidently misunderstood my answer.

Q. What do you mean by the "location?"

A. I can possibly best explain it to you by giving you the points of distinction; we are short haul probably from Memphis to Pine Bluff; the Iron Mountain is long haul; that is the two lines at Pine

Bluff. At Little Rock, we are the long haul; the Iron Mountain is next, and the Rock Island is shortest.

Q. And if there would be a still shorter line built——

A. The still shorter line would make the rate.

Q. If a still shorter line would be built, you would have to readjust your conditions to meet that shorter line?

A. Yes, sir.

Q. There was nothing of that kind requiring readjustment, from Nov. 1908 to June, 1909?

A. No, sir, there was nothing of that character.

Q. Did I understand your statement to be, that from Nov. 2nd to June 1st, the principal changes were in regard to the L. C. L. rates?

A. That, I believe, was my statement.

Q. You could not approximate the extent of the other changes, but think they were proportionately speaking, small, as I understand it?

A. As affecting rates, yes; of the volume of traffic, I could not say.

Q. Well, it is the revenue feature of it that I am inquiring about?

A. I understand.

2278 Q. Could you give me an estimate from your experience, as to the volume of traffic intrastate, which moves under the class rates,—that is, L. C. L. and carload both?

A. You mean under the Standard Freight Distance Tariff?

Q. Yes, take it under the Standard Freight Distance Tariff?

A. It was very small.

Q. The volume of traffic that moved under it was small?

A. Yes, under class rates.

Q. Under both carload and less?

A. Yes, for the reason that the object of the Standard Freight Distance Tariff appeared to be to establish commodity rates to cover all given commodities, carload and less.

Q. Could you approximate the proportion of the movement into the state, under the class rates, and under the commodity rates? Have you ever figured on it, or given it any thought?

A. No, sir; I have given it considerable thought and figured on it, but it was impossible to arrive at it, without getting figures from the accounting department, and it was too voluminous a task; I have never attempted to get the figures.

Q. It would be impossible then for you — make even an approximate estimate?

A. One that would be of any service to you, yes.

No cross-examination.

2279 R. E. KIMBALL, being first duly sworn and examined, deposed as follows, being recalled:

Redirect examination.

By Mr. HILL:

Q. I requested you, when you were last here, to make a calculation, assuming the 96.1% increase in state freight and 9.4 increase in interstate freight, had been effective during the last six months of 1907, per ton per mile, and to make a calculation upon the apportionment of the expense between state and interstate traffic, as shown in your exhibit, covering that period, so as to show the decreased amount apportioned to interstate traffic under the supposed increase, and the increased amount apportioned to state traffic, under the supposed increase. Have you made that calculation?

A. I have, yes, sir.

Q. Will you attach that as Exhibit "E" to your testimony?

A. Yes, sir.

For Exhibit "E," see Volume 9, page 5778.

Q. I see from examining Exhibit "E," that you have made your calculations upon the basis that you have made your exhibits in this case, and also as the increases are illustrated in Exhibit 23; that is correct, isn't it?

A. Yes, sir.

Q. I will now ask you to state the result of that calculation in dollars and cents, the increased expense apportioned to state traffic, as shown by Exhibit "E"?

2280 A. Under Exhibit "E," the assumed basis shows the state freight expense, arrived at on a straight revenue basis of $148,796.45, for the period, July to December, 1907, inclusive. The actual figures for that period, as shown by Exhibit 33 were $89227.28.

Q. Showing an increase of how many dollars?

A. $59,569.17.

Q. Now, showing in the same way the decreased amount apportioned to interstate?

A. Under Exhibit "E," which is the assumed basis, the expenses apportioned to interstate freight, is $766,310.87, and under Exhibit 33, the expense apportioned to interstate traffic, which is on an actual basis and straight revenue being used, $823,408.60; the difference being a decrease of $57,097.73.

Q. By the "actual," you mean the actual revenue shown by your Exhibit 33, that you earned without the increase assumed which I have put to you to work out this problem?

A. Yes, sir.

Q. It is in evidence, that after the two cent fare was enjoined, that there was an increase in the passenger rate to 3 cents in most instances, but averaging about 35% in the passenger rate, by the railroads; it has been shown that the rates applied by the Cotton Belt on freight traffic in January, 1909, show an increase over those

in effect during the last half of 1907, of 96.1% on the state and 9.4 on the interstate? Applying these increases to the traffic,
2281 both passenger and freight, for the six months ending December 31, 1907, and using the gross revenue so ascertained, to divide the actual operating expenses of that six months, and also dividing double the assessed valuation on the same basis of your property, I wish you would state what would be the return on your property on that assumed basis, on the state traffic, and to save you the trouble of making the calculation, I wil hand you a calculation and you can see if that is correctly made?

A. I would like to have a little time to figure it.

Q. In page 2 of Exhibit 3, filed by Mr. Johnson, it shows the return on double the assessed valuation of the Iron Mountain, resulting from the operations of that line the last six months of 1907, but your exhibit does not make a corresponding statement, and I want you to attach as an exhibit, a corresponding statement to that, and we have prepared that here; I will submit it to you for your examination; it is just bringing forward in this form, your own exhibit.

A. I will want a little time to figure that.

Further examination postponed.

2282 R. T. BROOK, being first duly sworn and examined, deposed as follows:

Direct examination.

By Mr. HILL:

Q. What is your name, residence and occupation?

A. R. T. Brook, Miller, Little Rock, Ark.

Q. How long have you been engaged in the milling business?

A. I am a miller and grain man, and have been engaged in the grain business since 1898.

Q. Are you familiar with the grain elevators in this country, and their value, and grain elevators generally?

A. Yes, sir.

Q. It is a part of your business to be familiar with the values of them?

A. It is.

Q. Do you know the elevator situated in Little Rock, commonly known as the Bunch Elevator?

A. In Argenta?

Q. Yes.

A. I do, it is a mill and elevator.

Q. Do you know about its value?

A. The value today would be about $186,000, that is the mill, elevator and warehouse.

Q. Do you know about its value in 1907, say the last half
2283 of 1907?

A. It is about the same; I don't think there was very much difference in machinery at that time.

Q. Do you know whether that was a public elevator, during the last half of 1907?

A. It was a private elevator.

Q. I wish you would state your opinion of the rental value of that elevator property, taking the entire property?

A. The mill, elevator and warehouse rental value, reasonable rental value, would be about $20,000 a year.

Q. In 1907, what would it have been?

A. Same thing.

Cross-examination.

By Mr. MOORE:

Q. How long have you been engaged in business in Little Rock?

A. About four years and a half, since October 1st, 1905.

Q. And where did you do business before you came here?

A. Oklahoma.

Q. What was your business there?

A. Grain business, and interested in a mill; elevator business and mill business.

Q. Did you rent an elevator there?

A. No, I had one of my own.

Q. Did you ever rent one?

A. No, I didn't rent an elevator.

Q. Never rented one as lessor or lessee?

A. No, sir.

2284 Q. Have you any knowledge of the cost of the elevator in Argenta?

A. Only the cost which I acquired during a suit which I had against the Iron Mountain, the actual cost as shown in that suit; the cost of that elevator came out in that law suit.

Q. Was it as much as you have estimated the value here?

A. Pretty close to it; let's see; it was $106,821.76., and there were additions made since that time; a drier was put in, corn drier put in, amounting to about $50,000 odd dollars.

2285 C. W. LEWIS, being first duly sworn and examined, deposed as follows:

Direct examination.

By Mr. HILL:

Q. I wish you would state your name, occupation and residence?

A. C. W. Lewis, I am in the lumber business, living at Benton, Ark.

Q. How long have you been engaged in the lumber business, Mr. Lewis?

A. About ten years.

Q. Are you familiar with the rates on lumber that prevail over this section of the country?

A. Yes, reasonably so, I could name quite a few of them.

Q. I don't mean the detail so much as I do the general system of rates? Are you familiar with the general system?

A. Reasonably so.

Q. I hand you two maps, representing the zones in which lumber originates, and in which it is shipped; they are exhibits 39 and 40 in this case; I ask you to examine them—you have already looked at them, and I will ask you if you are familiar with the system that is shown in those maps?

A. I think so, yes, sir.

Q. Is there an additional zone on the east side of the river?

A. There is a blanket rate applies over here on the east side of the river.

2286 Q. On the gulf coast?

A. Yes, sir.

Q. Mississippi?

A. Yes, sir, and part of Louisiana, on the east side of the Mississippi River.

Q. And directly east of the zone that is shown on that map?

A. Yes, sir.

Q. Now, where is that zone rate to?

A. St. Louis.

Q. How does it compare with the zone rate which embraces Arkansas?

A. 2 cents lower than the west side.

Q. Then, they haul the lumber from that zone——

A. In Louisiana and Mississippi.

Q. To St. Louis, lower than they do from Arkansas?

A. 2 cents lower, yes, sir; 16 cents over there and 18 over here.

Q. Where is the market for the lumber that is produced in Arkansas, pine and cypress, I am speaking of?

A. Largely in the northwest territory.

Q. You mean the territory here indicated on this exhibit 39?

A. Yes, sir, largely.

Q. Are there heavy shipments into that zone from Arkansas?

A. Yes, sir, the shipments from Arkansas go into that territory very heavy.

Q. That is not a paper rate, it is a real rate?

A. Yes, sir, and it goes over here into Illinois, Indiana, and Iowa.

2287 Q. That proceeds under this zone rate, that is indicated on exhibit 40?

A. Yes, sir, that territory is practically all 8 cents beyond St. Louis.

Q. It is first predicated on 18 cents to St. Louis?

A. Yes, sir, it goes clear through to Chicago on 8 cents beyond, 26 cents; that territory up there is practically all covered by one rate.

Q. The question I want to direct your attention to particularly, is this; does the lumber really move from Arkansas under these zone rates indicated on these maps, or are they partly paper tariffs?

A. Well, it largely moves on those rates; of course, there are a great many of the mills have a tap line road that throws it lower.

Q. We will get at that as another proposition; I am speaking of the actual movement from Arkansas.

A. They largely move on the tariffs, as far as I know, on the published tariffs of the companies.

Q. Into these zones?

A. Yes, sir.

Q. Those zones then, largely represent the market that is found for the Arkansas pine and cypress?

A. They represent quite a good deal of the territory into which it goes.

Q. I don't mean all of it; a large movement is represented by it?

A. Yes, sir, quite a lot of it goes into that territory.

2288 Q. Are there other zones in the neighborhood of these exhibits on these maps, that take the same rate or practically the same rate?

A. Yes, sir; of course, the Oklahoma rate is not so much of a blanket rate as the other; Illinois, Iowa and Indiana take pretty nearly the same rate, little difference in it, doesn't amount to very much.

Q. Now, you referred to the tap lines; I wish you would explain how the lumber is handled over the tap lines, and what you mean by tap lines?

A. We don't own any tap lines; we don't own any railroad, but the tariffs show a differential for the smaller roads throughout Arkansas, that give them a part of their haul, running from 3 to 6 or 9 cents difference.

Q. That is, a small part of this 18 cent rate or 23 cent rate, is divided with this small line?

A. As I understand it, yes; I am not very familiar with that business; we don't own a railroad.

Q. Well, you may not be familiar with the detail; you know that is done?

A. Yes, sir.

Q. To illustrate that, suppose that a large sawmill had a road five or ten or fifteen miles long, and it shipped lumber, or logs first into its mill, and then the lumber on into St. Louis, how would that be divided?

A. It takes the same rate from the end of their road that it would from the main line, and then they are allowed a differential, whatever their arrangement is with the railroad; the differential

2289 runs, as I understand it, all the way from two to six cents.

Q. That is more a division of the rate than it is a differential, isn't it?

A. They have called it most anything.

Q. There is no increase in the rate, by reason of its being divided with the tap line?

A. No, it is the same rate; they have called it differentials, and rebates, and everything; I don't think anybody knows just what it is.

Q. Now, what we are particularly trying to find out in this case, is the cost of service and the revenue producing the rate; I want to know what would be the difference in cost, say that a shipment originated in the woods on some tap line, and was carried to St. Louis at 18 cents, and another shipment originated at your mill, and you say you have no tap line—that goes into St. Louis, and suppose the tap line joined the main line just where your mill is, what difference would there be to the Iron Mountain Railroad, if you were on that road, in hauling two cars of lumber, one from your mill and one from the other mill?

A. I don't think there would be any difference in the cost of transportation, so far as the Iron Mountain is concerned.

Q. What would be the difference in revenue?

A. For the Iron Mountain you mean?

Q. Yes, sir.

A. The difference in revenue would be whatever they would pay a tap line, whatever it might be; those tap line divisions
2290 don't all run the same; some fellows are able to squeeze more out of them than the others are.

Q. There is a variation on the revenue of the amount paid to the tap line?

A. Yes, sir.

Q. Does this division principle also apply to different railroads; suppose that lumber was shipped into Alexandria on the Iron Mountain from some other road——

A. They publish a through tariff and divide it up; yes, the same rate is applied, the same as in going over three or four railroads.

Q. And suppose that there would be two cars of lumber shipped via the Iron Mountain from Alexandria to St. Louis, and they would get the 18 cent rate, as I understand it; one of those cars originated at Alexandria, and was delivered to it there; the other originated at some other point on some other railroad, and was delivered to it at Alexandria, and those two cars were hauled to St. Louis together: as far as you can say, would there be any difference in the cost of service in hauling those two cars?

A. No, sir.

Q. Would there be any difference in revenue?

A. Of course, if the Iron Mountain started the shipment and carried it all the way, there wouldn't have to be any division, they wouldn't have to divide it with anybody else.

Q. That is the illustration I gave you of one car, and the other car they would divide that with the road that brought it in?

2291 A. Yes, sir, the one they hauled on their own line all the way, they wouldn't have to divide.

Q. Is there much lumber shipped that way on divisions?

A. Practically all the big mills, they get a division, as far as Arkansas is concerned; practically all the big mills have short lines of railroad, that is owned and operated by the same people, but of course, it is a separate corporation and the saw mill does not get any rebate, but the railroad gets the division.

Q. And the lumber that is furnished by the small mills and

not furnished by other railroads, produces a greater revenue to the Iron Mountain, or whatever the particular carrier is, to the final destination, than those shipments that originate on the tap lines and the other roads?

A. Yes, sir.

Q. Now, in shipping lumber from Louisiana territory into Little Rock, what would be the rate?

A. My recollection of that rate, I would not like to be absolutely sure about that, but my recollection of the rate is, it is 22 cents into Little Rock.

Q. Then a car of lumber originating down in Louisiana—say two cars originating in Louisiana, one destined to St. Louis and one destined to Little Rock, hauled in the same train, they would get 22 cents for the one to Little Rock, and the other car, they would carry it to Little Rock, and detach it from the other car and carry it to St. Louis for 18 cents; is that the situation?

2292 A. Yes, sir, that rate as I understand it, is in there for the purpose of protecting the territory near to Little Rock; Louisiana cannot very well sell any stuff in this territory, on account of her rates; she can go to St. Louis as well as the rest of us.

Q. How about protecting the revenue?

A. I don't know about that end of it.

Cross-examination.

By Mr. MOORE:

Q. What is the reason for the establishment of zone rates on lumber from Arkansas territory into these northwestern points?

A. Well, I really don't know that I know just what the reason is.

Q. It is in pursuance of some policy?

A. I suppose, I judge you would call it a policy of the railroad; I know no better name for it; it is a blanket rate covering certain territory.

Q. Do you know what causes railroads to give those blanket rates?

A. I could hardly say that I know just what causes it.

Q. What is your understanding about it?

A. My understanding of the matter is that those rates were put in—in fact, I think that is the way—that those rates were put in when railroads first built in here; it opened up new territory, and it was figured out on some sort of a basis, to get stuff to market, and they just simply figured about what the commodity would

2293 stand and took their wad, so that the other fellow could just about break even.

Q. What do you mean by that, "about what it would stand"?

A. For instance, four years ago, when the price of lumber was up, they raised the rate; the commodity and rate runs about together; the manufacturer gets about as much as the railroad does.

Q. Isn't one reason for that adjustment, that it enables the manufacturer to do business?

A. Yes, possibly, that evidently has something to do with it; if

the rates were all the same, and all things being equal, of course, it would put the manufacturer on an equal footing——

Q. Isn't that one of the objects of it?

A. I presume so.

Q. What would be the effect of putting rates on a mileage scale, and charging according to the distances on the lumber industry in this state?

A. Of Arkansas?

Q. Yes.

A. It would help Arkansas.

Q. What effect would it have on territory south of Arkansas?

A. Really, I don't know; it strikes me it would not hurt that seriously, because they could get it down to the gulf and export it.

Q. How are those zones to the northwest situated, with reference to other lumber producing territory; is there any other
2294 lumber producing territory that can serve those markets in these zones than the Arkansas, Texas and Louisiana territory?

A. No, not unless they went west.

Q. What territory is there west?

A. They would have to go west of the Rocky Mountains, and that is a long freight haul, too.

Q. If the railroad would apply mileage scale rates, what effect would it have on the carrying business of the different lines of road in this state, say the Iron Mountain road and Chicago, Rock Island & Pacific Railroad; which of those two lines has the shorter haul to St. Louis for lumber?

A. Without looking it up closely, I would say the Iron Mountain has.

Q. What effect would the mileage scale have upon the ability of the Rock Island road to deliver lumber in St. Louis, if that is the case.

A. It might make the rate a little bit higher from Rock Island points; if it was figured on an exact mileage basis.

Q. That would be prohibitory, wouldn't it, for business on the Rock Island, if the rates were higher?

A. I don't know; not necessarily; they don't maintain the same rate now; the Rock Island, in some instances, gives two cents, where the Iron Mountain gives four or five to the tap line.

Q. Give me some instances in which you say there is a
2295 larger amount given by the Iron Mountain than the Rock Island?

A. This Fourche River & Indian Territory Railroad up here, that taps the Rock Island at Bigelow, according to the testimony of one of their men in court a few days ago, runs from 2 cents to Memphis, to two to Cairo, I believe, 3 to St. Louis, four to Kansas City, and 4½ to Oklahoma points west.

Q. You mean that is the division given the tap line?

A. That is the way I remember it.

Q. What tap line is that?

A. That is the Fourche River & Indian Territory?

Q. What is the length of that tap line?
A. I suppose they have 20 miles.
Q. Now, give me an instance on the Iron Mountain on all fours with it?
A. I haven't the evidences strong on that, but I am informed that the Grayson-McLeod road, St. Louis Southwstern,—what is the name of their tap line road they had down there——

Mr. HILL:

Q. Arkansas Southwestern?
A. Yes, sir, it is a part of the Iron Mountain now, but a few years ago, Mr. Grayson told me they were getting four cents.

Mr. MOORE:

Q. I want to compare the two at the same time.
A. The fact about it is I haven't got those rates.
Q. If you haven't got the rates on both lines themselves, you can't really testify about that, can you?
2296 A. I am only testifying as I understand them, and have picked it up; I am not absolutely positive about it.
Q. Your understanding on the old Grayson road, it was owned by a different interest from the Iron Mountain several years ago?
A. Yes, sir.
Q. What was the length of that line?
A. At that time, about 12 or 15 miles, it is longer now.
Q. What is the most direct and shortest road from this territory to the Kansas City market?
A. I really don't know.
Q. Which is the more direct, the Iron Mountain or the Rock Island?
A. I really don't know; one reason we never paid much attention to the direct road in shipping the stuff, was because they had the same rate both ways, I really couldn't tell you just exactly about those rates because I have never thought about them very seriously. It was a flat rate, and it never made much difference, if they carried it clear around the world, just so they got it there.
Q. It is a fact, isn't it, among competing railroads, the one that has the shortest line, if the rate is based on a mileage scale, can oust its competitors?
A. That would depend somewhat on the supply of the commodity.
Q. Assuming there is a supply.
A. Assuming that each had the same chance at the commodity?
Q. Of course, I assume that.
2297 A. That would be true, yes.
Q. But for this blanket arrangement that would be true as to the roads that hauled lumber out of Arkansas to the northeastern markets?
A. That might be true.
Q. Have you ever made any complaint that these rates were too low?

A. No, sir, never have.
Q. Do you think they are too low?
A. Which rates do you mean?
Q. The lumber rates in these zones?
A. You mean to St. Louis?
Q. Yes?
A. No, sir, I never complained about them being too low; I grumbled about them being too high.
Q. Do you think they are too low?
A. I think they are too low for the other part of the territory at least.
Q. I mean with reference to the services rendered by the railroad in transporting them, do you think they have put them too low so they cannot make anything on them?
A. No, I don't think they would put them where they couldn't make any money.
Q. I want to ask you a little more about these tap lines, describe to me just what they are, what is the arrangement of the tap lines?
A. Since we never did own one, I don't know whether I could be very minute in my descriptions of those things or not. It is
2298 only in a general way I know anything about them.
Q. What is the length of those tap lines?
A. They are supposed to be roads originating the product; that is, they go out and those tap lines run out into the timber and bring in logs; sometimes, the mill is located on the road; sometimes at the junction; the tariff is made to cover everything that goes off of that road; it goes from the junction point; supposed to be just what goes off the road; in fact, it is everything that the sawmill can buy; it is only supposed to be everything that originates on the road; everything they ship is billed off the tap line; if they could get a differential, they would be very foolish not to take it.
Q. Tell me the length of those lines?
A. They vary anywhere from five to twenty-five of forty miles; the Fourche River Railroad is chartered for forty miles; they built about twenty-five.
Q. What is the length of the Arkansas Southwestern?
A. It is quite a road now; it goes away out into Montgomery County, must be fifty or sixty miles.
Q. What service do those tap lines render to the main lines?
A. They really originate the stuff; they get the timber, the lumber.
Q. And haul it to the junction points?
A. Yes, sir.
Q. Who owns the line?
A. Usually they have a corporation that owns them; they are owned by the railroad corporation.
2299 Q. They are owned by different individuals from the main line?
A. Yes, sir, usually the same people who own the saw mills.
Q. They are usually incorporated railroad companies?
A. Yes, sir.

Q. Operating in that line of business?

A. Yes, sir.

Q. And they originate this freight and carry it to the junction point on their own rate?

A. Yes, sir.

Q. What other service do they render besides simply transporting it; do they load it on the car?

A. The railroad does not load anything; the sawmill loads it, of course, but they all do that; the sawmill on the main line loads the same as the other.

Q. The same rule is practiced as is practiced generally, the owner of the product loads it on the cars?

A. Yes, sir.

Q. And these tap lines haul the cars out to the point where it originates?

A. Yes, sir, hauls the cars to the timber, and hauls the timber into the mills.

Q. Probably hauls the empty cars out there to get the lumber?

A. Yes, sir.

Q. They have a double haul, a haul going and a haul coming back?

A. Yes, sir, they usually run a bunch of log cars.

2300 Q. Now, if the railroad company sent their cars out to these points where the lumber originated, they would have to send them out empty to get the load and bring them out to the junction?

A. It is all the same whether the car goes ten miles further or stops at the junction.

Q. I want to get at the fact, whether the railroads, if they sent out their cars to the point where the material originates, would they have to send them out empty in order to get them returned loaded?

A. It would not be practical to send regular railroad cars out to the logs, if it was a proposition where they hauled logs.

Q. Take a proposition where they haul lumber?

A. Then it would be all the same, if it was on the main line.

Q. I mean a tap line which is 25 or 30 or 40 miles off the main line?

A. If a mill was located out on the tap line, why of course they would have to have some way to get the cars out to the junction.

Q. What I want to get at is this: there is a real service rendered by these tap line railroads, in transporting this product along the railroad from its origin to the destination of shipment?

A. There is supposed to be at least, and there is in the greater portion of them.

Q. It is just a matter of division of the rate, in consideration of the services they render?

2301 A. So far as the railroad is concerned, yes.

Q. Do you know really—I am not asking now if you have information or knowledge, upon which the basis of the division is made, for tap lines, what they get for their services?

A. No, sir, my understanding is they don't earn some.

Q. Is that simply an impression you have or do you know that from your own knowledge?

A. It is largely gathered from the testimony of railroad mill operators in different suits where they have been in court.

Q. It is second-hand information?

A. Yes, sir.

Q. Now, there might be a difference, based on the difference surrounding the service, might there not?

A. Sure.

Q. You don't know to what extent the differences in character of services rendered, and differences that affect the service or that can affect it, what effect that has on the basis of the division?

A. No, sir, those things, so far as I know, are arranged between the different freight agents of the railroads and the operators.

Q. You found in your experience, that they are disposed to give the shipper too large a proportion of the rate, in case they divide with him?

A. Well, take the mill located right at the junction, and every cent that he gets is that much over the fellow that doesn't
2302 own the railroad.

Q. If he is right at the junction, what services does he render?

A. Nothing in the world; he brings his logs in on the railroad and the rest of us bring them in on the dirt road.

Q. However, doing that the railroad makes him some allowance for that?

A. Yes, sir, they pay a differential.

Q. Do you know what the regulations of the Arkansas State Commission are, in regard to the transportation of logs to the milling points to be milled and put in condition to ship to the market, do you know what the regulation is in regard to rates prescribed by the state commission?

A. In moving logs?

Q. Rough material?

A. Yes, I know some of their rough material rates.

Q. What are they?

A. They are based largely on the mileage basis.

Q. What cases do they apply to, in connection with the shipment?

A. The only requirement is to make a point with the railroad company that they will ship it out again.

Q. What is the rate prescribed in cases like that?

A. It runs from two to six or eight cents; I don't remember just how high it does run.

Q. There is, under the regulations of the state railroad commission, a rule prescribed of compensation for hauling the rough material to the mill where it is shipped out by the line of
2303 some other carriers?

A. Yes, there is a rule that is used somewhat, but it does not amount to anything much, except to the factories, furniture factories.

Q. There is a regulation of that sort?

A. Yes, sir.

Q. Who do those rough material rates apply to; what class of shipment, or rather, what class of material do they apply to?

A. That is rough material, rough lumber.

Q. Does it apply to furniture, rough lumber that is manufactured into furniture?

A. The Rock Island, I believe does—the Iron Mountain——

Q. I am talking about the regulations prescribed by the state commission?

A. We had a wrangle awhile back about it, and they cut out a part of that, but I think it has gone back again; I know the screen door manufacturer gets it.

Q. Do you know whether it has been the subject of investigation by the Interstate Commerce Commission or not?

A. Yes.

Q. Do you know what ruling they made?

A. The papers are full of it all the time.

Q. Do you know what ruling the Interstate Commerce Commission made in regard to it?

A. I couldn't tell you just now.

Q. Wasn't there some complaint before the Interstate Commerce Commission, relative to rates east and west of the Mississippi River on lumber?

2304 A. Yes, sir, they raised it east of the river, and they forced it down again.

Q. Were you a party to that proceeding?

A. No, sir, we have always been west of the river; my understanding is there is no tap lines allowances on the east side of the river at all.

Q. Perhaps I didn't make my question clear; I understand that there were two cases growing out of the complaints made in one instance by shippers east of the river, and in one instance by shippers west of the river; were you a party to either of those proceedings?

A. No, sir.

Q. Do you know whether the Interstate Commerce Commission made a reduction in rates east of the Mississippi River?

A. Yes, the rate was reduced.

Q. Wasn't it done because the tap line arrangement did not exist there?

A. Yes, sir, and my idea about the one that started on the west side was that it never was pushed in a very clean cut manner; the trouble about it is, all the big fellows on this side of the river cannot afford to push it, and the little fellows haven't the money.

Q. The fact is, they made the reduction east of the river and didn't west?

A. Yes, sir.

Q. And this tap line service and the division of the rates, west of the river, figured in that controversy?

2305 A. Yes, sir; I understand there is no tap line east of the river; I think may be there is one; one road is allowed a division, and it is a pretty good railroad.

Q. Now, you testified about the rates that were allowed, the compensation allowed to tap lines, and I think you said they got from four to nine cents?

A. I don't know just what that difference is; it runs, as I have been informed, some people told me that they got as high as seven, eight or nine cents.

Q. Who did you get that information from, what tap line was it that got seven or eight or nine cents?

A. Really, I don't like to give the gentleman away; he may have been giving me hot air; I don't care to get him in the controversy.

Q. All you know is possibly some hot air handed out to you?

A. I know what Mr. Morrison swore over here in court a few days ago, and I know what the Manager of the Fourche River road swore; I mean practically what they swore.

Q. Really do you know of any instance in which tap lines received a division of nine cents?

A. No, sir, I don't know of any positive division of nine cents.

Q. Do you know of any case where they received 8 cents?

A. You mean do I know positively if they got it?

Q. Yes?

A. No, I don't know positively.

Q. Do you know of any instance where they got six or
2306 seven cents?

A. No, sir, I don't know positively; I don't own a tap line, and I don't know that they receive anything.

Q. Your testimony is all hearsay?

A. Yes, largely necessarily so, on the tap line proposition, because I don't own one.

Q. What lines haul the principal part of the lumber from Louisiana points to Little Rock?

A. Really I don't know, I am not very familiar with the shipments from Louisiana to Little Rock.

Q. You stated if I understood you correctly, that the rate from Louisiana points to Little Rock is 22 cents?

A. That is my understanding.

Q. Do you understand that is the rate on the Iron Mountain?

A. Yes, that is the way it was given out to me.

Q. How did you get that information?

A. I got that information over in a hearing before the state railroad commission, and Mr. Watson, I think it was, was on the stand, and we were having a little tilt about raising the rates in Arkansas, and the Commission was inquiring as to what effect it would have on lumber in Arkansas, and I suggested it might let Louisiana into Little Rock on as low a rate as anybody, and I think Mr. Watson or somebody from the Cotton Belt, said the rate into Little Rock was 22 cents.

Q. Is this the gentleman?

A. Yes, sir, I think so; that is my information; I never looked it up.

Q. You really don't know what the rate on the Iron Moun-
2307 tain is?

A. Except what I have given you.

Q. Did he tell you what the rate on the Cotton Belt was?

A. He just said the rate from Louisiana to Little Rock was 22 cents; he was just showing us very clearly we would not get hurt by raising the rates.

Q. Who wanted the rates into Little Rock or Arkansas from Louisiana to be raised?

A. Nobody cared about that; it came in incidentally.

Q. In what way would that affect the lumber business in Arkansas, the rate from Louisiana?

A. If it was low enough, and they could ship cheaper than we could, it would help out.

Q. In other words, you apprehended a rate might be made that would enable the people in that territory to compete with lumber in this territory?

A. Yes; the distance in lumber rates doesn't cut but very little figure, when they go to making them.

Q. Why doesn't it?

A. They go to Chicago for 26 cents.

Q. Doesn't that fact that I referred to a moment ago, the giving of a very low rate from Louisiana in to this territory, wouldn't that interefere with the business of the manufacturers in this territory, doesn't that show and illustrate the necessity for these zone or blanket rates, in order to protect the different producing and purchasing territories.

A. Of course, it is very clearly illustrated what effect it has;
in the first place, the land values in that Southern territory
2308 are higher than they are in this country; timber land in that country is worth easy twice what it is here.

Q. In what way does that affect this country?

A. It would be the same proposition over again; it would still raise their timber land higher if they had lower rates; the cheaper they could sell the stuff, the more the stuff is worth.

Q. In other words, the cost of material is what causes the value of the lands to increase; as that increases, they are able to pay higher rates; is that true?

A. In other words, as the rate goes down, the stumpage goes up.

Q. Is there any difference in the amount of timber to the acre there is in that section, compared to this?

A. Yes, their timber is generally speaking, better—more timber on the ground.

Q. Their land is more heavily timbered?

A. Yes, sir, it lays betters; it is easier to put a road in.

Q. That is not a very material question there, but the point I want to get at is whether this system that you have called attention to, in testifying from the map, is not necessary and grows out of the conditions of that traffic?

A. I don't feel like it is; it may be.

Q. You think it would be better for the territories that produce

and the territories that buy, and for the shipper, and the carrier that there should be a mileage scale?

2309 A. I think so, decidedly so.

Q. Let's see why you think so; how far are you from St. Louis?

A. 375 miles, something like that.

Q. How far are most of your competitors south and west of you from that market?

A. After you get way down south, as you get to the gulf——

Q. South Arkansas, I mean?

A. It would only be a short distance further.

Q. It is a little further?

A. Yes, sir.

Q. If you put it on a mileage scale, it would make a difference of increasing the rate?

A. Yes, sir.

Q. The man closest to the market would think the mileage scale best?

A. Yes, sir.

Q The man a little further away wouldn't think so much of it?

A. Yes, sir, but Arkansas points happen to be up on that side.

Q. Aren't you a little closer to St. Louis market than most of your competitors?

A. Yes, possibly, not many of them; a few, yes.

Q. Can you recall,—just give us the names of any that are closer than you, except those in your immediate vicinity?

2310 A. No, none closer to amount to anything, I don't know of any closer; there wouldn't be much difference though in several of them.

Redirect examination.

By Mr. HILL:

Q. Mr. Moore was asking you about the rough material rate, and at the same time asking you about this tap line division; is there any relation or connection between those two propositions?

A. No, sir, they wouldn't have any use for a rough material rate?

Q. They don't need that in their business?

A. No, sir.

2311 A. C. READ, being first duly sworn and examined, deposed as follows:

Direct examination.

By Mr. HARROD:

Q. What is your name?

A. A. C. Read.

Q. What is your business?

A. I am with the Southern Trust Co., in the Real Estate Department.

Q. I will ask you if your experience in the real estate business, qualifies you to pass upon the value of rentals in this City?

A. Yes, I think it does.

Q. Are you acquainted with the hotel, known as the Pratt Hotel and the property therewith connected, such as the lunch room and hotel?

A. That was the old hotel?

Q. Yes?

A. Yes, sir.

Q. In 1907?

A. Three years ago.

Q. I would like for you to state, what in your judgment, is the fair rental value by the month or year for that property, including the hotel, bar room, lunch counter, and news stand, therewith connected?

A. How many rooms were there in the hotel?

2312 Q. I don't know exactly.

A. Around down here, with hotels of that character, we average them along at about $5. a room.

Q. Per month?

A. Yes, sir.

Q. What would you think the bar room privilege would be worth?

A. Our idea has been that was one of the best paying bar rooms in the city of Little Rock; about the highest priced rental of any bar room in this city, would be about $250.

Q. What would you think that would be worth per month?

A. $250.

Q. And the hotel would be worth $5. a room, at least?

A. Yes, sir.

Q. What do you think that the lunch stand and newspaper stand would be worth?

A. I don't know; we generally rent those to the highest bidder, or one we can get for them, but I should think easily $50. a month, for the lunch stand and the news stand; now, there are some news stands paying $50. and $75. a month up town here.

Q. You would think the news stand and lunch counter would be worth $50.00, and the bar room $250., and the hotel $5. per room?

A. Yes, sir.

Q. What do you think about the number of rooms in the hotel?

A. I don't know; I have been in there and slept there several nights, but I don't know how many rooms there are.

2313 Cross-examination.

By Mr. MOORE:

Q. Did you do your drinking at that bar?

A. No, sir.

2314 A. R. BRAGG, being recalled, deposed as follows:

Recross-examination.

By Mr. MOORE:

Q. You told me you would look up the matter as to whether the rates at certain points in northern Texas, among them Marshall and Jefferson and Waskon and Atlanta come under the Texarkana combination in rates? Interstate rates.

A. I found by taking the Texarkana proper tariff and adding the Texas Commission tariff, adding them on some commodities, it was a combination of the two rates.

Q. The two rates referred to are rates to Texarkana plus the local from Texarkana?

A. Yes, sir, plus the Texas Commission rates.

Q. Those places you me-n were the basing points for similar rates to other points?

A. Yes, sir, there were smaller points taking the same rates,—intermediate points.

Redirect examination.

By Mr. HILL:

Q. How many points were there?

A. There were only about four immediate points; that was Atlanta, Marshall, Jefferson and Waskon; the nearest point to Texarkana was 24 miles, and the furtherest was about 70.

Q. The statement was made by you in answer to some question the other day, that some of the voluntary interstate rates of the railroad to Arkansas points, were lower than the Commission tariff,
2315 and lower than the court tariff; have you looked up any of those rates since that time?

A. I have.

Q. Where did you find those?

A. I had knowledge of those conditions before, but I made some figures, on the White River Branch of the St. Louis, Iron Mountain and Southern.

Q. Have you those?

A. Yes, sir.

Q. I wish you would attach that to your deposition as Exhibit "F."

A. Yes, sir.

For Exhibit "F," see Volume 9, page 5781.

Q. Those are prevailing rates are they?

A. They are rates in effect now.

Q. Do you know of any other point where that same condition prevails?

A. Yes, sir.

Q. What other points?

A. That condition prevails on southern lines in the vicinity of Dermott and Varner.

Q. Southern part of the state?
A. Yes, sir.

And further deponent saith not.

2316 W. E. FLOYD, recalled, deposed as follows:

Direct examination.

By Mr. HILL:

Q. You are secretary of the Railroad Commission?
A. Yes, sir.
Q. Pursuant to an agreement entered into between the Railroad Commission and several of the railroads of the State, have any of the railroads filed monthly reports of the business under the court tariff, showing an increase of revenue by the court tariff, over Standard Distance Tariff #3?
A. Yes, sir.
Q. Have you any reports of the Chicago, Rock Island & Pacific?
A. Yes, sir, I have reports of the Rock Island road for four months.
Q. When was that filed?
A. On April 26th, 1910.
Q. I will ask you to read into the record the increases that are shown by those reports?
A. For the month of June, 1909, the report showed an increase of 19.59% of revenue received under the court tariff over what would have been the similar revenue under Standard Freight Distance Tariff #3, had it been in force and applied to the traffic moving. The report for the month of July, 1909, showed an increase of 21%, applied as above stated. The report for August,
2317 1909, showed an increase of 22.06% as above stated. The report for September, 1909, showed an increase of 21.32 as above stated, making an aggregate increase for the four months' period of 21.09% of revenue received under the court tariff, above what would have been received had the rates prescribed in Standard Distance Tariff #3 been applied for the traffic moving during those four months.

2318 J. W. CROCKETT, being first duly sworn and examined, deposed as follows:

Direct examination.

By Mr. HILL:

Q. Please state your name, residence and present official position?
A. Little Rock; John W. Crockett; I am at present, a member of the Arkansas Railroad Commission.
Q. When did you become a member of the Arkansas Railroad Commission?
A. In January, 1907; I don't remember the date; I was sworn in sometime in January, 1907.

Q. Since you have been a member of the Arkansas Railroad Commission, have any of the trunk lines operating in the State, asked of the commission an increase in revenue?

A. No, sir.

Q. Either in whole or in part?

A. No, sir.

Q. Have they asked the Commission to raise any of their freight rates?

A. No, sir, I don't recall any.

Q. Have any of the small lines asked relief of the Commission in rates?

A. Yes, sir, the Little Rock, Hot Springs and Western asked the commission to permit them to restore some of the old rates which they had, which was an increase.

Q. Was it done?

2319 A. Yes, sir.

Q. Any other short lines applied to the commission for an increase?

A. I don't recall now judge, possibly so.

Q. Didn't the Missouri & North Arkansas?

A. Yes, they did.

Q. And the L. & A., didn't they ask for an increase?

A. I don't remember now.

Q. Since you have been a member of the Commission, if the railroads had applied to the Commission and showed you that the intrastate rates in force were non-compensatory, would you, as a member of the commission, and in your judgment would your associates on the commission have been willing to grant an increase of rates?

Question objected to by the plaintiffs.

A. Yes, sir, had they come to me or come to the commission, I would, and I am sure the other members of the commission would have permitted them to put in higher rates, if they had convinced us that the rate was too low.

2320 J. D. WATSON, being recalled, deposed as follows:

Direct examination.

By Mr. HILL:

Q. Are you familiar with coal rates from Illinois fields to Arkansas and Louisiana?

A. Reasonably so.

Q. I will ask you if you can give the rates over the Missouri Pacific under the joint tariff, from the Illinois field to Little Rock?

A. My recollection is $2.25 per ton. Yes, it is $2.25.

Q. What would it be from the Illinois field to Grady, Ark.?

A. $2.25.

Q. How far is Grady from Little Rock?

A. It is on the Little Rock, Mississippi & Texas Division, south of Little Rock.

Q. Something like forty or fifty miles?
A. I should judge more than that.
Q. Take Monroe, La., what is the rate from Illinois field to there?
A. $2. per ton.
Q. As against $2.25 for Little Rock?
A. Yes.
Q. What is it to Tullaloola, La.?
A. Also $2.
Q. What is it to Vidalia, La.?
A. $1.60.
Q. What is it to Rayville?
A. $2.25.
2321 Q. Same as Little Rock?
A. Yes.
Q. All of those shipments for Louisiana would pass through Arkansas would they not?
A. Through Arkansas but not through Little Rock.
Q. They would take the river division down?
A. Yes.
Q. Could you give me about the distance from Illinois field to those fields furtherest south into Louisiana, that I have given you?
A. The tariff would not give it, and I would not be able to give it without an examination of some mileage table.
Q. Give an approximation of it.
A. I should say it was five hundred some odd miles.
Q. How much further from the Illinois field than Little Rock would be?
A. Probably 150 to 200 miles.
Q. Are you familiar with rates from the territory north and east of St. Louis to Arkansas common points?
A. Reasonably so.
Q. How are those rates made?
A. There is a differential over the rates from St. Louis to Arkansas points.
Q. In dividing the rates made by this differential as you call it, there is a proportion of the rate going to the line that brings it to St. Louis, greater than the differential added to the St. Louis rate, to make the through rate?
A. Equal to or greater.
Q. Usually greater, isn't it?
2322 A. Yes.
Q. That would make the revenue of the Iron Mountain or of your road less on shipments derived from those carriers, bringing it in, in that way, than if the commodity originated in St. Louis, wouldn't it?
A. Yes.
Q. Could you give me the through rate and the division of the rate on a shipment of St. Louis beer, I think you have beer in St. Louis, originate some there, and also, some in Milwaukee, and that beer is consumed in Arkansas, some of it, strange to say.
A. I couldn't give you the figures off-hand.
Q. Could you look that up and give me the division on that; I

want a shipment of a carload from St. Louis to Little Rock or some other Arkansas point, and a shipment of beer from Milwaukee say, giving the divisions, assuming that the beer passed through St. Louis, and was handled as the St. Louis beer was down here, and showing the revenue which the Iron Mountain or your road derived from the shipment?

A. The fact that it passes through St. Louis has no effect on the rate; the rate adjustment is governed by an entirely different factor.

Q. I just want to make the illustration, have you the division sheet here?

A. No, but I can get them.

Q. You may make the illustration from some point, on packing house products, say from Chicago, to Little Rock, and a simi-
2323 lar shipment of packing house products, from St. Louis to Little Rock, showing the revenue derived by the road handling from St. Louis to Little Rock, and take farm wagons from Moline, Illinois, and compare that with shipments of other agricultural implements from St. Louis to Little Rock; I mean, a like shipment of wagons; if you don't find wagons, any other commodities of that class.

A. You mean in carloads?

Q. Yes; do you know how the first class rate from Chicago to Little Rock is made, and how it is divided?

A. By what junction?

Q. St. Louis?

A. We would not handle Chicago business via St. Louis; via East St. Louis the rate from Chicago is $1, with a differential of 20 cents, and the division of that through East St. Louis, the line to East St. Louis receives 65% of 40 cents; that is my recollection of the figures.

Q. You are familiar with rates from St. Louis to Little Rock and Alexandria and New Orleans, are you not?

A. Yes, sir, reasonably so.

Q. What is the rate on shoes and dry goods from St. Louis to Little Rock?

A. $1 per hundred pounds.

Q. What would it be to Alexandria, La.?

A. $1.25.

Q. What is the rate from St. Louis to New Orleans, on the
2324 same thing?

A. My recollection is it is 60 cents, I am not sure.

Q. 90 I think.

A. 90 cents, is right.

Q. How much further is it from St. Louis to New Orleans than it is from St. Louis to Little Rock?

A. I should say twice as far.

Q. The cost of service seems to be a little less from St. Louis to New Orleans than it is to Little Rock?

A. There are entirely different conditions governing there.

Q. It is not the cost of service that governs?

A. Not altogether.
Q. It doesn't seem to be a very large part of it.

Mr. MOORE:

Q. The Mississippi River has something to do with it?
A. Considerable to do with it.

Mr. HILL:

Q. Here is packing house products, carload; what is that to Little Rock?
A. I think it is 23 or 26 cents; the rate today is 31 cents.
Q. What is it to Alexandria from St. Louis?
A. 44 cents.
Q. And to New Orleans from St. Louis?
A. 30 cents.
Q. Are you sure of that; Mr. Hamilton had it 23 cents.
A. He used Helena figures, which I came very near using.
Q. A shipment of Packing house products to Little Rock would be 31 cents; to Alexandria, it would be 44 cents; to New
2325 Orleans, it is 30 cents?
A. Yes.
Q. That shipment going through to New Orleans would pass through Alexandria, wouldn't it?
A. I don't think so, under present conditions.
Q. How would it go?
A. By Ferriday, I think.
Q. Be any difference in the haul?
A. No, sir, not much.
Q. Wouldn't amount to very much more, if it went one way or the other?
A. Well, considerable.
Q. Forty or fifty miles?
A. More than that I should say.
Q. Some of the traffic gentlemen have used the pianos as an illustration of many points; I wish you would give me the piano rate from St. Louis to Little Rock; Pianos from St. Louis to Little Rock.
A. Pianos from St. Louis to Little Rock, carload, 65 cents.
Q. Isn't that 85, Mr. Watson?
A. No, 65 is right.
Q. Which class would it take?
A. It would take 2nd class.
Q. It has a commodity rating?
A. Yes, sir, 65 cents to Little Rock.
Q. Give us the commodity rate to New Orleans?
A. 75 to New Orleans.
Q. 65 to Little Rock?
A. Yes, sir.
2326 Q. What is it to Alexandria?
A. I can't give you that positively; I haven't got the necessary data to give it to you.

Q. You know the rate on soap from St. Louis to New Orleans, give us that, L. C. L. and carload both.

A. Soap, carload, St. Louis to New Orleans, 22; less carload, 25 cents.

Q. Give me those corresponding rates to Little Rock?

A. St. Louis to Little Rock, carload 33.

Q. L. C. L.?

A. 49.

Q. Give me the rates on beer, carloads, St. Louis to New Orleans?

A. 21.

Q. That is to New Orleans?

A. Yes.

Q. Give me the beer rate to Little Rock, from St. Louis?

A. 27.

Q. Give me the first class rate from St. Louis to Paragould, Ark.?

A. 81.

Q. What is it to Memphis?

A. 65. The first class rate to Paragould is governed by Western classifications, and the rate to Memphis is governed by Southern Classifications.

Q. Give boots and shoes?

A. I would have to have the Southern Classification.

Q. Boots and shoes would be in a classification?

2327 A. Not necessarily.

Q. Give us some other rate; have you a carload rate?

A. The only thing you could successfully compare, without having the classifications, before you, would be some commodity; that is what I have been giving you.

Q. Take a shipment of boots and shoes from St. Louis to Paragould, and similar shipments from St. Louis to Memphis, and give us the rates, and take packing house products, L. C. L.

A. That is, St. Louis to Paragould, and St. Louis to Memphis.

Q. Yes, sir, I have used various illustrations, but I will ask you if it is not a fact, that there is a large list of special commodity rates from St. Louis to this territory, effective for many years, what you might call Mississippi River points, and such rates are considerably lower than rates to intermediate points in Arkansas from St. Louis?

A. The Mississippi River points territory carries a great many commodity rates and a great many class rates, governed by different classifications different from the classification west of the river, which would result in somewhat lower rates in that territory.

Q. Isn't it a fact that there is a large list of rates from St. Louis to New Orleans that are lower than the rates for the same articles into Arkansas?

A. That is true.

Further examination postponed.

2328 H. C. HALVERSON, being first duly sworn and examined, deposed as follows:

Direct examination.

By Mr. HARROD:

Q. What is your name?
A. H. C. Halverson.
Q. What is your age?
A. 24.
Q. What is your occupation?
A. I am chief clerk to the Assistant General Passenger Agent.
Q. Where?
A. Little Rock.
Q. How long have you been so engaged?
A. I have been here since the 21st of March.
Q. This year?
A. Yes, sir, 1910.
Q. Were you connected with the Iron Mountain passenger service in Arkansas, prior to that time?
A. I was with the Missouri Pacific-Iron Mountain system in St. Louis.
Q. Are you familiar with the prices for which transportation is sold by the Iron Mountain, and for which it has been sold for the last six months in this state?
A. Yes, sir.
Q. Tell us the forms of passenger transportation you sell and the prices?

2329 A. Do you mean local and coupon?
Q. Anything that you sell in the way of passenger transportation?
A. We have local tickets on sale between local stations on our line, and we have coupon tickets on sale to foreign lines, and we have various issues of mileage books.
Q. Tell us about tickets within Arkansas, and mileage books that are used within this state and the rate?
A. In regard to the mileage, the Southwestern Passenger Association, of which we are a member, sells a mileage credential book in Arkansas, that is sold for a dollar; but there must be 2000 miles used in Arkansas, and there is a refund made down to two cents a mile.
Q. It costs the user two cents a mile, plus one dollar?
A. Yes, sir.
Q. He pays 3 cents, and gets a refund of one?
A. Yes, sir, but on some lines, there is a two cent rate; but he does not get that originally on the Iron Mountain.
Q. I am talking about the Iron Mountain.
A. Where it figures two cents a mile, there is no refund; usually, the only case in which he gets a two cent rate is where it is a competitive rate.
Q. Do you sell 500 mile mileage books?

A. That is $10, good locally on our line in Arkansas.
Q. Good anywhere in Arkansas?
A. Yes, sir, on our line.
Q. It is selling now for $10?
A. Yes, sir, it formerly sold, up to about a month ago, if I am not mistaken, for $12.50.
2330 Q. They did sell for 2½, but now it sells for 2 cents?
A. We have two five hundred mile books on sale; I have that circular; it may be the Arkansas book that still sells for $12.50.
Q. Those books are sold at all stations in this state, are they?
A. Yes, sir, and our coupon offices are provided with books.
Q. And they are sold for 2 cents?
A. No, that is in Kansas; in Arkansas they are sold for 2½.
Q. Where are they selling at 2 cents?
A. In Kansas, interstate, between St. Joe, Missouri and some other points, and that is competitive business we have up there.
Q. You are selling those in Kansas for 2 cents, are you?
A. Yes, sir, that is straight 2 cents a mile, and there is no refund, and these mileage books are sold there.
Q. Now, at competitive points in this state, you meet the competition of the Rock Island and these other people who are selling for 2½, don't you?
A. Where we have competition we do, but between some points we don't meet their rate.
Q. At every place the Rock Island touches out of Little Rock, and that your road touches, wouldn't you meet their rate?
A. Not at all points; it depends upon our main line points.
Q. You advertise to meet competition, don't you?
A. No, sir, not between all points.
Q. Don't you advertise that you sell these mileage books
2331 for 2½ cents, in order to meet competition of all your competitors?
A. That is not my understanding of it, no, sir.
Q. You say at some points, competitive points, you make rates to meet the rates of competitors, and some you do not; where are those points you speak of?
A. Our rate to Memphis, Tenn. is the same from Little Rock as the Rock Island; they make that rate being the short line, and we meet that rate.
Q. Tell me some competitive point you don't meet the rate?
A. I couldn't say positively whether we hold up our Little Rock to Helena rate or not; we hold up our rate, but I don't know whether,—exactly what the Rock Island fare is, but I don't think we would meet that rate, on account of our main line; if I am not mistaken, our rate between those points is $3.70, and the Rock Island rate was formerly that, but whether they reduced that when they went back to 2½ cents, I couldn't say positively.
Q. What is the rate to Ft. Smith?
A. $4.70, I think.
Q. What is the Rock Island rate?

A. The same thing; we meet their rate; 2½ cents figured on their line, would make less than 3 cents on our line.

Q. How about from here to Hot Springs?

A. We meet their rate in that; they make that rate on 2½ cents; we are the short line in there from Benton to Hot Springs,

2332 but we meet their fare, which is $1.55.

Q. Do you know any place out of Little Rock that you sell a ticket higher than the Rock Island rate, that the Rock Island goes to?

A. Crossett, Ark., our rate is higher than theirs.

Q. Have you a through line to Crossett, Ark.?

A. No, sir, we come back in there from Montrose; and also to Warren, Ark., and there is the same condition exists there; that is back off on a branch line of ours.

Q. That is the round about way of getting there?

A. Yes, sir.

2333 THOS. MCCUTCHEON, being first duly sworn and examined, deposed as follows:

Direct examination.

By Mr. HILL:

Q. I wish you would state your name, age, residence and occupation?

A. Thos. McCutcheon, residence Argenta, 1020 Poplar St.

Q. What is your occupation?

A. Switchman.

Q. How long have you been working as switchman?

A. I have worked there off and on since 1880.

Q. How long have you worked at Argenta?

A. From 1903.

Q. Working there yet?

A. No, sir, not since the first of this year.

Q. And you are not employed as switchman now?

A. No, sir.

Q. What company have you been working for?

A. Iron Mountain.

Q. Working in the Iron Mountain yards at Argenta?

A. Yes, sir.

Q. The yards of the Little Rock Division of the Iron Mountain road?

A. Yes, sir.

Q. Are you familiar with the way freight trains are handled in these yards?

A. Yes, sir.

Q. I wish you would explain your duties as switchman?

2334 A. Our duties as switchman, when a train comes into the yard, after it is carded, we break it up, put each car where it belongs in different tracks for different points.

Q. How do you know where each car belongs?

A. By the number on each car.

Q. That is designated on the car for the information of the switchmen?

A. Yes, sir, the contents and number of the station.

Q. I wish you would explain what is done with a through freight train coming in from St. Louis say, and what would it largely be composed of; how would you handle it, explain it in your own way?

A. It is broken up, just as I told you; I never saw a through train that came in that didn't have to be broken up.

Q. What do you mean by being broken up?

A. Where were different cars that didn't go through with that same train, cars for different points in it; I never did see a through train for the south from the north go straight through.

Q. Some of these gentlemen high up in the operating department of the roads have compared their through trains to a bridge, have compared a bridge running through the state to their through trains. Is there anything like that?

A. No, sir.

Q. You did not discover the bridge?

A. No, sir.

Q. What difference is there between the bridge and the actual facts?

A. Now, I have seen a fruit train come, that there would
2335 not be anything done to it, but to change the caboose.

Q. That would be from the south?

A. Yes, sir.

Q. Have you seen many of those?

A. No, sir.

Q. Have you seen anything else but a fruit train now and then?

A. A vegetable train, onion train.

Q. Some onion train from southern Texas?

A. Yes, sir.

Q. You have found a few of those?

A. Yes, sir.

Q. They are the only bridges you discovered?

A. That is all.

Q. The bridge only worked occasionally in going from Texas through to the north; the bridge didn't from the north when it came down south?

A. No, sir.

Q. What do you do with the cars in the train as they come in, you speak of breaking them up; that is a technical term that you understand, but we don't just explain that operation?

A. There is different tracks designated for different cars for different points; all cars that would go to the Valley, there is a track they go on; also, we set north and south cars for different tracks.

Q. And with the exception of these few onion and fruit trains, that come in here, every train you handled was broken up in
2336 that way?

A. Yes, sir.

Q. And new trains made out of these trains that had been broken up in that way?

A. Yes, sir.

Q. Was there any difference in handling the carloads that would come in, say from St. Louis, than there would be handling carloads that were delivered to the railroad here, say from the brick plant or cotton seed plant, or any other industry in Little Rock, after it was delivered to the railroad, would there be any difference in the handling of that than there would be in this train from St. Louis?

A. No, sir, they would be all handled in the same way.

Q. Of course, before it was delivered to the road, a car would be set out to the industry's switch, and loaded there, and then delivered to the road?

A. Yes, sir.

Q. The same would be true in St. Louis or wherever the car originated, that same service would be performed elsewhere?

A. Yes, sir.

Q. After it is delivered to the road, the handling of the car originating locally would be the same as a car originating in St. Louis or Chicago?

A. Yes, sir.

Q. Suppose a car came down from the Ft. Smith branch, or came up from Pine Bluff, how would it be handled?

A. The same way as the other; if it came from Fort Smith, it is switched in the Fort Smith yard, and it is set out on the track;
if it was going north, it would be set on the north track,
2337 where they kept the north cars, and if south, it would be
on the south track, and then another engine comes up and gets it and switches it out again, down below the south end?

Q. To the main line track?

A. Yes, sir.

Q. As I understand you, all the trains, the freight cars are brought into Little Rock, they are broken up, and new trains made out, and they are sent out to their destination in that way.

A. Yes, sir.

Cross-examination.

By Mr. MOORE:

Q. I suppose from your statements, that trains sometimes come into Little Rock from St. Louis with cars that are destined to Texas and cars destined to points in Louisiana—that is true, is it?

A. Yes, sir.

Q. When a train of that character comes, what do you do in the yards at Argenta?

A. Break it up and switch out the cars that would go to Louisiana on a different track from what would go to Texas.

Q. You place the cars that go to Louisiana on the tracks from
which it would be taken to the Valley line, do you not?
2338 A. Yes, sir.

Q. What do you do with the cars that are going to Texarkana?

A. Put them on the south track.

Q. Suppose that train was going right on through, no occasion for it to stop here?

A. We would let the cars go back on the train.

Q. The cars destined to Texas on the main line, would go right on back on the main line?

A. That is after you switch them here.

Q. What switching do you do of cars going through on the main line to Texas?

A. If they are shipped in altogether, which they are very seldom, you would not probably be required to handle them at all.

Q. Unless it is necessary to handle them in your yards, they sometimes remain on the track and you switch off the Louisiana cars and put them on the Valley track?

A. Yes, sir.

Q. You call the line that goes down the Arkansas River into Louisiana the Valley line, do you not?

A. Yes, sir.

Q. Have you ever seen any through trains carrying grain from the northwest to points south or east of here?

A. Yes, sir.

Q. Is that handled, going from points northwest to territory south and southwest of here, in a solid train?

A. Yes, once in a while.

Q. Is it necessary to break those trains up?

A. Not unless there would be a bad order car.

2339 Q. They frequently come through in solid trains?

A. I don't think I have ever seen very many solid trains of grain.

Q. Those that are through trains, solid trains do go through?

A. Yes, sir, if there are no bad orders to switch out.

Q. There is no switching done at all in Little Rock?

A. No, sir.

Q. You compared the switching for the purpose of collecting the cars that were located at the local industries around Little Rock?

A. Yes, sir.

Q. What service is rendered in getting those cars ready for shipment out of the station?

A. They are taken from this side over to the other side of the river, just like other cars.

Q. Let's assume that there is to be a carload shipped from the Dickinson Brick Factory, tell me the entire service connected with the handling of that car?

A. If it would go south, it would be taken from here over to the other side of the river and put on the track where there were south cars, and possibly be there for a day or whatever time until the first train went out, and if they didn't have too much tonnage of perishable freight, that car would go.

Q. Where would you take it from?

A. We would take it from the brick yard.

Q. How would you get it to the yards?

A. Take it out empty out there.

Q. And you would have to do that switching?
2340 A. You would have to handle the empty and loaded car too.
Q. You would have to switch that car out to the industry whether it was a brick factory or some other sort of factory?
A. Yes, sir.
Q. There to be loaded?
A. Yes, sir.
Q. Then what would be done with it?
A. It would be switched out again and taken back over to the Argenta yards.
Q. What would you do with it when you got it to the Argenta yards?
A. If it went south, it would be put on the track that holds the south cars.
Q. Then what would you do next?
A. If we was making up a train for the south——
Q. You didn't make up a train for just one car, did you?
A. No.
Q. You would put it on the same holding track, wouldn't you?
A. Yes, sir.
Q. Until there were enough cars to make up a train going in the direction in which that particular car was going?
A. Yes, sir.
Q. When you had gotten enough cars together for that purpose, what would you do?
A. Make up a train.
Q. Composed of those cars?
2341 A. It all depends; if it was what we call a short load, for the first or second or fourth station down the line, those cars are kept by themselves, and they don't go in through trains, they go on locals.
Q. Tell me just how those are handled, tell me how you handle the cars containing shipments from local industries, that are carried out of Little Rock on the locals?
A. They are handled just the same as any other train.
Q. You see I don't know how any other train is handled, give me the details of that?
A. We would go over to any of these industries, switch those cars out, if they were loaded, and bring them back; possibly there would be empties and loads mixed up together, and some would be for the north and some for the south or west, wherever they were doing, and they would have to be all switched on different tracks and kept there until there was a train order; if there was enough cars to order a train, they generaly ran one.
Q. Then what was done?
A. That is all we have to do—put on a caboose and engine.
Q. That is the way you would handle a local?
A. Yes, sir.
Q. You would make up a train composed of those cars that would go to local points in the state?

A. If there was enough of them; if there wasn't, we would probably put on some through loads.

Q. Next, describe the process of handling cars that are destined to points outside of the state.

2342 A. Yes, they are handled about the same way.

Q. Is it usual in a train made up here at Little Rock, composed of cars going to points in Texas or Oklahoma or Louisiana, or are the cars that you wish to send to points outside of the state, usually hooked on to some passing through train that comes along from St. Louis or from some other shipping center?

A. Yes, sir.

Q. Which course is pursued?

A. They would possibly go with that train that came in if it was perishable freight, perishable goods; after they collect up enough here,—they are all kept separate here, perishable cars and other freight cars, and that train that came in from St. Louis, might only have one or two cars that would go locally on the next train.

Q. I am asking you what the common practice is, not with perishable cars alone; do you make up trains to go to points outside of the state here at Little Rock, or do you attach cars containing goods to be shipped into other states to passing through trains; do you understand that question?

A. I think I do.

Q. Which course do they pursue?

A. Both, at times.

Q. Which course is more commonly pursued?

A. The more common, I guess, would be on through trains.

Q. How do you handle a car loaded at one of the industries, which you want to attach to a through train, to take to a point in Texas?

2343 A. If it was a through car, it is just throwed on with the through cars.

Q. You would first send the car to the place where it is to be loaded?

A. Yes.

Q. And then you ship it back and put it on the proper track in the yard at Argenta, until a through train goes, say from St. Louis to a point in Texas, where that shipment is directed?

A. Yes, sir.

Q. When that train arrives, the switching engine takes it off the holding track and couples it on to the through train?

A. Yes, sir.

Q. That is the process in that respect?

A. Yes, sir.

Q. If you are making up local trains of cars loaded at industries, you handle them in the same way I indicated, as far as collecting them is concerned?

A. Yes, sir.

Q. You first get them from the industry?

A. Yes, sir.

Q. You put them on some holding track?

A. Yes, sir.

Q. When you get up enough to make a train, these cars are assembled on some holding track on which they can be carried to the various points out in the country; that is correct, isn't it?

A. Yes, sir.

2344 Q. Is there a class of trains passing through Little Rock from trade centers out of this state, called Red Ball trains?

A. Yes.

Q. Do you know what a Red Ball train is?

A. Yes, sir.

Q. What is that?

A. That is supposed to be first class freight.

Q. How are those trains handled here?

A. They are handled just like the rest; I never saw a through Red Ball train go through here.

Q. Did you ever see one of those trains to which cars were attached, handled at this point?

A. Yes, sir.

Q. How are they handled?

A. They are handled just like all the rest.

Q. Now, let's see; suppose there is a train of that character originating in St. Louis and going to Dallas, Texas, made up of cars made up at St. Louis of cars destined to Dallas, Texas; that train arrives at Little Rock, and may be you have one or two cars at this point which you desire to go to Dallas, Texas; now, would there be anything necessary in the way of switching, except to switch those cars on the track and couple them on that train?

A. Not unless there was some to come out.

Q. My question indicates the situation; I didn't say there were any to come out; that is what you would do in that case?

2345 A. Yes, sir.

Q. If another train was to come along containing cars for Alexandria, La., and some cars for Dallas, Texas, then you would separate them, and put cars that were going to Alexandria on the Valley track?

A. Yes, sir.

Q. And if the cars were in good condition that were going through to Dallas, they would go right on through on the main line?

A. Yes, sir.

Q. As I understand you, the services rendered here in connection with through trains, is simply in shifting the cars onto the proper tracks, to enable them to go to points beyond that they are destined to?

A. Yes, sir.

Q. You don't handle trains of through cars?

A. No, sir.

Q. Are you in the railroad service now?

A. No, sir.

Q. How long since you went out of it?

A. The 10th, I believe, of December.

Q. Did you sever your connection with the railroad voluntarily, or were you discharged?
A. No, sir, I was not discharged.

Redirect examination.

By Mr. HILL:

2346 Q. Mr. Moore has put a question to you about a supposed through train from St. Louis to Dallas, did you ever see one of those?
A. No, sir.
Q. That is one of those bridges, isn't it?
A. I never saw one; there is always cars to take on or put off.
Q. He supposed a through train from St. Louis to Alexandria, did you ever see that?
A. I believe I saw one of wheat once.
Q. In your five years' experience, you found one of those that was travelling on the bridge?
A. Yes; I don't remember seeing any more, but there might have been more; I wasn't there day and night.
Q. You worked your eight or ten hours each day?
A. Twelve hours a day.
Q. In your five years experience, working 12 hours a day, you say you saw one of those?
A. I don't remember but seeing one train of wheat.
Q. I mean of any other freight train—through train.
A. No, sir, except fruit.
Q. Any other train going south from the north; you have already explained there are a few trains of onions and fruit going north?
A. Yes, sir.
Q. Your answer to his questions on that, that you had some cars here you might hook on them, that would be the practice if there was such a train, but in fact, I understand there would be no
2347 such trains?
A. There would be some to put on and some to come off?
Q. Wouldn't there be more than that to do?
A. The caboose to change and engine.
Q. What about inspection?
A. All those trains have to be inspected.
Q. Those through trains going through on the bridge have to be inspected like the others?
A. Yes, sir.
Q. And if you found them in bad order——
A. They would have to be set out on the bad order track.
Q. All those through trains undergo an inspection just the same as local or any other trains?
A. Yes, sir.
Q. How long do these through cars, as a rule, stay here?
A. Sometimes they stay a good deal longer than others; sometimes if they are Red Balls they are switched out; they always stop the Red Balls and keep them for Red Ball trains

Q. They wait here in the yards until there is enough cars of that class to make up a train?
A. Yes, sir.
Q. Suppose it was not Red Ball, would they usually stay?
A. They often would go out before the Red Ball; that is, if there was enough of a train.
Q. It would just depend on the kind of traffic that was coming in, which would go out first, whether the Red Ball or what do
2348 you call the other?
A. Dead freight.
Q. It wasn't a question of just shooting them through?
A. No, sir.
Q. It was a question of making up trains?
A. Yes, sir.
Q. That is the way it is practically handled?
A. Yes, sir.
Q. Whatever may be the theories on the subject?
A. Yes, sir.
A. As a rule, how long are these through cars held in the Little Rock yards?
A. They don't usually stay very long.
Q. That would vary with the seasons of the year?
A. Yes, sir.
Q. Depend on how the traffic was moving and things of that kind?
A. Yes, sir.
Q. Mr. Moore is assuming that this through train that was running over here like over a bridge, was on the through track; would it stay on the through track?
A. No, sir.
Q. Main track?
A. No, sir.
Q. Even this one train of wheat that went through here on a bridge didn't stay on the main track while it was here?
A. No, sir.
Q. It was switched off too?
2349 A. Yes, sir, they have to go into the yard with the others.
Q. If there was a bad order car which had to be set out, the train was broken up?
A. Yes, sir.

Recross-examination.

By Mr. MOORE:

Q. Did you ever see a through train from St. Louis to some point south of here passing this place?
A. Never did.
Q. Did you ever see through cars from St. Louis going to points south?
A. Yes, sir.
Q. What is the largest number of those cars you ever saw collected in one train?

A. I couldn't tell that; I think about thirty-eight or forty loads south, and fifty north.

Q. You have seen trains come here then with thirty-eight or forty loads; that is, that many cars from St. Louis to points south of this?

A. Yes, sir.

Q. Didn't that constitute a train?

A. That is south from here.

Q. Didn't that constitute a train?

A. Yes, sir, south.

Q. Tell me again what a Red Ball train is?

A. It is first class freight, supposed to be first-class freight;

2350 I have seen lumber Red Balled, perishable I presume.

Redirect examination.

By Mr. HILL:

Q. In your answers to Mr. Moore's last questions, did you mean that you had seen 38 cars come from St. Louis in one train, and those 38 cars carried straight on south?

A. Yes, sir.

Q. That was the maximum that you did see?

A. Yes, sir.

Q. Was there any set out from that 38 cars?

A. Yes, sir.

Q. That is what you mean, that that was the most you had ever seen?

A. Those were empty stock cars.

Q. That was as many as you had ever seen that went on one train, that would come in on one train?

A. Yes, sir.

Q. Of empty cars; that would be very many more than you would see of any other kinds?

A. Yes, sir.

Q. I suppose empty stock cars would be about the principal cars you would see going through?

A. Yes, sir, and empty foreign cars.

Q. Stock traffic through Arkansas on the Iron Mountain is comparatively small?

A. Yes, sir.

2351 Recross-examination.

By Mr. MOORE:

Q. Did you mean to state in answer to questions just asked you by counsel, that you never saw a train of 38 or 40 cars going south from St Louis except empties?

A No, sir, I never did

Q. You never saw a train then of loaded cars, containing from thirty to forty loads, going south from St. Louis to points south of Little Rock?

A. Not in one train.

Q. Were you here in 1907?
A. Yes, sir.
Q. October, November and December two years ago last fall?
A. No, sir, I guess I was in St. Louis.
Q. I thought you said you have worked here five years?
A. Yes, sir, but I was in the hospital a week or two weeks or three weeks.
Q. Any longer?
A. No.
Q. Just think a little bit and see if you cannot recall that there were a great many heavily loaded trains of grain passed through in solid trains, going from points in the northwest to points south and east of here, say to New Orleans, in the fall and winter of 1907?
A. No, sir.
Q. You cannot recall that?
A. No, sir.

And further deponent saith not.

2352 It was agreed, that GORDON N. PEAY, if present, would testify as follows:

My name is Gordon N. Peay: I am of lawful age, and live in Little Rock, and have been engaged in the real estate and banking business in this City for many years, and am acquainted with rental values of property in said City: I am well acquainted with the Pratt Hotel, and was in 1907: I think the reasonable rental value of the hotel, including bar, dining room, news stand and lunch stand, would be $350.00 a month, in 1907.

2353 R. E. KIMBELL, a witness of lawful age, being duly produced, sworn and examined on behalf of the defendant, testified as follows:

Direct examination.

By Mr. HILL:

Q. When we were last in session I requested you to make a couple of exhibits, which you wanted to have time to prepare carefully, have you done so?
A. Yes, sir, I have.
Q. Will you please present each one of them and state what it is as you present it?
A. The first exhibit, which will be "Exhibit G" is a statement covering six months ending December 31, 1907, prepared in answer to the request of Judge Hill, showing assumed revenue on the following bases:

State freight 96.1% increase over actual: interstate freight 9.4% increase over actual; state passenger, 35% increase over actual; interstate passenger, no increase over actual; miscellaneous, no increase over actual; and also showing the actual operating expenses, taxes and rentals divided between the several classes of traffic on
2354 the basis of the assumed gross revenues, ascertained as above; also double the assessed valuation divided on the same gross

revenue basis and the percent of return on said valuation.

Those, as I understand it, are the features you desired covered in this exhibit.

Q. In your other exhibits you carried forward 100% on freight and 25% on passenger for the supposed added intrastate expenses: I do not remember whether I asked you to carry that forward on this exhibit or not.

A. You did not and I did not do it. I confined the statement to your request literally.

Q. Mr. Kimbell, I see from your exhibit G that the return upon your property, assuming an increase of 96.1% on intrastate traffic, 9.4% on your interstate traffic, and 35% on your intrastate passenger traffic, will give you a return of 18.58% upon your property.

A. That is correct, without considering any extra cost for handling state business.

Q. That is what you would call the straight revenue basis, is it not?

A. Yes sir.

Q. And if the extra cost of one hundred or more percent on the freight, and twenty five or more percent on the passenger, were added to that, it would produce a still higher return upon your property as shown in your previous exhibit—I mean, the
2355 intrastate property.

A. It would produce a higher rate than is shown on the previous exhibits, for the reason that the revenue has been increased on this arbitrary basis.

Q. Mr. Kimbell, will you answer as to the other exhibit which I requested you to make?

A. Yes, sir. I submit a statement which will be Exhibit "H" being a statement supplemental to Exhibit No. 33 and prepared in answer to the request of Judge Hill, showing operating expenses, taxes, rentals, etc. and double the assessed valuation of property, divided between the several classes of traffic on basis of actual gross revenues for the six months ending December 31, 1907.

Q. Mr. Kimbell, this would show a return upon your property for this period on a straight revenue basis of 12.84% of all business done in Arkansas, would it not?

A. Yes, sir.

Q. And for the intrastate business done in Arkansas, freight and passenger combined, for the given period, without any extra cost for either freight or passenger business done in the State, as over the interstate of 7.71% upon the property?

A. Correct, yes, sir.

The exhibits "G" and "H" are marked respectively and are in the words and figures following to-wit:

For Exhibit "G", see Volume 9, page 5783.

For Exhibit "H", see Volume 9, page 5785.

2356 Cross-examination.

By Mr. MOORE:

Q. You stated this exhibit was supplemental to Exhibit 33: is that correct?

A. That is correct.

Mr. HILL: I intended to ask Mr. Kimbell something else and I may as well ask him now Mr. Moore.

Q. Mr. Kimbell, I wish you would give us the original or a copy of the contract between your road and the Iron Mountain for that leased road and trackage of the Paragould line.

A. Do you intend to put that in evidence? It is a very voluminous document.

Mr. HILL: I presume we can agree on that. I want to put part of it in evidence. You had better let us have the contract and we can agree on what we want.

Mr. MOORE:

Q. Mr. Kimbell, how was the 96.1% increase in interstate freight shown on Exhibit G, just filed by you, arrived at?

A. The 96.1% is the percentage of increase in the average revenue per ton per mile for the month of January 1909, over the average revenue per ton per mile for the six months ending December 31, 1907.

The 9.4% is the corresponding average increase on the interstate traffic.

Q. Would it be a fair assumption to compare the average revenue on business that moved in January, 1909, with the business that moved in the last six months in the year 1907?

A. I should say that it would be unfair.

2357 Q. I wish you would state your reasons for that opinion.

A. The assumption of an increase in the revenue for the six months ending December 31, 1907 as submitted by Judge Hill, which assumption is predicated on the average revenue per ton per mile for that period, being the same as the average revenue per ton per mile for the month of January, 1909, is, in my judgment, misleading, and in fact is highly improbable.

Such a difference in the average revenue per ton per mile on state freight as exist- between the six months ending December 31, 1907 and the month of January, 1909, might occur with exactly the same rates in effect for both periods. I say it might occur, for the reason that the character of freight handled during the two periods might vary sufficiently under exactly the same rates to materially change the average revenue per ton per mile.

Since this question was raised by Judge Hill a few weeks ago, I have investigated in a general way the character of the principal commodities handled during the two periods referred to and find these important changes in the commodity movement, which would

under any set of rates, have the effect of increasing the average revenue per ton per mile:

Coal, a low rate commodity, constitutes 5.5% of the total state movement for the six months ending December 31, 1907, and but 1.02% for January, 1909.

2358 Forest product material, another low rate commodity, constitutes 29.40 percent for the six months ending December 31, 1907, and but 13.96 percent for January 1909.

Now, on the other hand, the following important commodities which are rated higher than coal and forest product material show a proportionate increase in volume handled as follows:

Grain and grain products for the six months, 3.87 percent, and for January 1909 5.86 percent.

Hay, for the six months period 13.30 percent, and for January 1909, 18.56 percent.

Cotton seed products for the six months' period 5.58 percent, and for January 1909, 15.67 percent.

This market shifting in the character of tonnage handled would in itself make a radical change in the average revenue per ton per mile even though there was no change in the rates, and in my opinion, accounts in a large measure for the difference in the averages of state business during the two periods.

The length of haul of the differently rated classes and commodities is also an important factor to be considered in a comparison of this kind.

Exhibit 35, which covers the six months' period, shows an average haul of 43 miles for state freight and 232 miles for interstate freight.

2359 Exhibit A, which covers the month of January 1909, shows an average haul of 41 miles for state and 222 miles for interstate freight.

It is a recognized fact that as the haul increases the average revenue per ton per mile decreases. It is, therefore, to my mind, misleading to make a comparison of the average revenue per ton per mile for one period with another unless the character of tonnage carried and the haul for each kind of tonnage is identical.

I might say in this connection, that there is apt to be confusion in the use of the terms "average rate per ton per mile" and "average revenue per ton per mile". As heretofore explained, the average revenue per ton per mile may vary to a marked extent during any two periods, notwithstanding the fact that the identical rates prevailed during both periods.

The Interstate Commerce Commission uses the language "average receipts per ton per mile." It appears proper to use the term "average revenue per ton per mile" or "average receipts per ton per mile", which, as is well known, is determined by dividing the ton miles for all classes of freight handled into the revenue derived from all classes of freight handled. A change in the average revenue per ton per mile, or the average receipts per ton per mile, does not necessarily mean a change has occurred in the rates, as a variation of tonnage would of necessity produce a change in the revenue.

2360 As regards the assumption of 35 percent increase in state passenger revenues and no increase in interstate passenger

revenues, I wish to state that in my re-direct examination, in answer to a similar problem submitted by Judge Hill, I stated that the assumption of 33⅓ percent increase in state freight rates without any increase in interstate freight rates was in my judgment an incorrect one and for that reason principally the example submitted by Judge Hill was not one that could be practicably applied to any condition that might exist.

I wish to reiterate these remarks in connection with the problem submitted by Judge Hill, which assumes an increase of 35 percent in the state passenger revenue and no increase whatever in the interstate passenger revenue.

So far as my observation and study of adjustments, brought about by rate changes goes, I should say that it would be an impossible condition to assume that the state passenger rates would increase 35 percent without any increase whatever in the interstate passenger rates.

The passenger rate men, however, would be better able to explain that than I would.

Mr. HILL: Are you referring to Mr. Stone?

A. I say most any passenger rate man. Those are my reasons why it seems to me that the comparison proposed by Judge Hill is not a fair one.

Mr. MOORE: Mr. Kimbell, you were asked by Judge Hill,
2361 in reponse to which question you filed exhibit G, the following question:

"If the rates which produce the increase in average revenue per ton per mile as shown in your January 1909 statement of 96.1 percent on interstate freight had been in effect during the last six months of 1907, I want you to calculate the gross revenue of your freight traffic for that period, assuming now that the increase has been during that period."

I want to ask you, Mr. Kimbell, if it was a change or variation in the rates that produced the difference in the revenue per ton per mile, or was it the change in the character of the tonnage and commodities that were handled during the two periods, and was the result affected also by the differences growing out of the long and short haul, as between state and interstate business?

A. I would say in answer to that, that there are three elements which were affected, namely:

There was some change in rates; there was likewise a very marked shifting in the character of the tonnage handled, and there was a difference in the length of haul, all of which had its effect.

Q. I want you to state if the change in the revenue per ton per mile on your railroad would run uniform in any two months—is it likely that it would, or is there a variation from month to month of the revenue per ton per mile, both state and interstate, as compared with the last six months of 1907?

2362 A. There are some very wide fluctuations, I have noticed, in the average revenue per ton per mile.

Q. Is not that a necessary result of the variations in the character of the tonnage that is handled from time to time?

A. I think that fact is amply proven by periods when there are no changes in rates and there are still these changes in the average per ton per mile.

Q. I was going to ask you that question: if those variations did not occur when the rates were the same?

A. It is true they do, yes, sir.

Q. And that grows out of the shifting of the business as it occurs from time to time, the shifting in the character of the business handled?

A. If the majority of our tonnage handled for six months was low class tonnage, it is reasonable to suppose that our average revenue per ton per mile would be low. Now, if on the other hand, next month the majority of our tonnage handled was high class, it is likewise reasonable to suppose that the average revenue per ton per mile would be higher.

Q. I believe you have already stated that your Exhibit G provides for no extra cost in handling state freight?

A. It does not.

Q. Mr. Kimbell, Exhibit G shows an increase of 35 percent in passenger revenue, and no increase in interstate:

I want you to state what the facts are in regard to whether
2363 there was a corresponding change made in interstate passenger rates at the same time there was a change made in intrastate passenger rates.

A. As I understand it, there undoubtedly was. The passenger people adjusted their interstate rates as soon as possible after the change occurred in the state rates.

Q. So that increase in the revenue from one class of passenger traffic without any increase in the other, did not grow out of difference of rates, did it——

A. No sir.

Q. —because the rates were kept uniform?

A. That would be an absolutely impossible condition, I should say.

Q. Now, does this 35 percent represent any actual figures, as shown by the operations of your road, or is it merely an assumption?

A. It is an assumption, based on the conclusions, I think, that were reached at Little Rock last Spring when Judge Trieber considered the proposed advance in passenger and freight rates. The general average at that time, as I recall it, was about 35 percent in the passenger business.

Q. What I want to get at is this: you have assumed in here an increase of 35 percent in passenger revenue over the actual.

A. Yes, sir.

Q. Where does that assumption arise?

2364 A. That was Judge Hill's suggestion.

Q. But is it an actual fact, do your records show that?

A. No, sir, that absolutely is not according to the books.

Q. Your Exhibit H, which is an extension of a former exhibit filed by you as exhibit No. 33, by showing the return on the basis of exhibit 33—upon the value of the property, this return shown on

exhibit H is based on straight revenue, without any allowance for extra cost, is it not, Mr. Kimbell?

A. Yes, sir.

2365 R. E. KIMBELL, recalled, testified as follows:

Redirect examination.

By Mr. HILL:

Q. Mr. Kimbell, I did not quite follow you in your comparative figures that you gave in that six months' period and the January, 1909, period: let us see if I can get it: you give the percentage on coal, for the six months' period as 5.50 per cent, I believe?

A. Yes, sir.

Q. That is intrastate or interstate?

A. This is all intrastate business I am speaking of.

Q. Did you compare the coal movement of the interstate with that?

A. No, sir.

Q. Would that be of any value, to make a comparison of the intrastate coal of the six months' period with the one month period, when you do not compare it with the interstate coal movement for the same period?

A. For the purpose of determining the average revenue per ton mile on state business, I should say that interstate had nothing to do with it.

Q. Take this for illustration: I see that in January your coal, intrastate traffic, was only one per cent. Suppose that the coal, intrastate traffic, was only one per cent during that month?

A. That would not affect the average revenue per ton per mile on state business.

Q. No, but it would affect the relation of the revenue be-
2366 tween the state and the interstate business, would it not?

A. Yes, sir; these percentages I was giving there were to show the impracticability of comparing the average rate per ton per mile of state business for the month of January, with the six months' period.

Q. The comparison we were seeking to call your attention to was the relation between state and intrastate, 9.4 per cent increase of interstate and 96.1 per cent on the state:

Will these figures throw any light on that, when you do not compare the tonnage for the corresponding period for the interstate?

A. I should say it would. Your whole question is predicated on a 96.1 per cent increase on state freight.

Q. While there is only 9.4 per cent increase on the interstate?

A. Yes, and we seek to show you in these figures I have given you here, that that 96.1 per cent is not a normal condition. That is to say, that it could be entirely different from that.

Q. You seek to show that there is a great fluctuation in your revenue, is not that it?

A. I seek to show that while that difference occurs there it could

occur without any change in rates whatever; it could occur by reason of the shifting of traffic.

2367 Q. That shows that there is great fluctuation in your revenue?

A. Yes, sir.

Q. It is rather an unreliable yardstick to measure your expenses by if it fluctuates that badly, is it not?

A. Yes, sir. It is very good, I will say, for operating comparisons. That is about the only use we ever make of it. It is all right to compare January 1909——

Q. You are talking about ton miles and I am talking about ton revenue: this shows a great fluctuation in your revenue, does it not?

A. It does.

Q. Does not that show that your revenue is a very unreliable yardstick to measure your expenses by?

A. No, sir. I should say that the revenue reflects the returns on the different classes of traffic that may be handled.

Q. It is the return from the traffic?

A. Yes, and if the revenue is large, I think it is logical to conclude that we have handled some high-class freight and are therefore entitled to high revenue.

Q. That is merely a question of revenue, but you are seeking now to measure your cost by your revenue and you are showing very great fluctuations in your revenue?

A. Yes; fluctuations, it seems to me, are quite proper; if the revenue is high, it is reasonable to suppose the expense would be high for handling that high class traffic.

2368 Q. And if the revenue is low, the expense is lower, is that your theory?

A. That would be the logical conclusion, on a revenue basis. It reflects the service.

Q. Mr. Kimbell, could you give us your figures showing the percentage of coal tonnage in January 1909, interstate, and your coal tonnage for the six months' period, and the lumber, grain, hay and cotton seed products, just like you have on this?

A. It can be done, but I would dislike to have to do it.

Q. It seems to me that that is a necessity growing out of your exhibit here.

Mr. MOORE:

Q. Would that involve a large amount of labor and expense?

A. Yes, sir.

Mr. MOORE: Then I want to advise Mr. Kimbell not to do it, unless he wants to do it voluntarily. You have accountants, and our books are open to you.

Mr. HILL: He has put one side in evidence and it looks to me as if it is up to him to put in the other side.

The MASTER: Mr. Kimbell, tomorrow morning you can show us what labor is necessary in relation to furnishing that, and about how much it will cost, and then we will decide that.

The WITNESS: As I understand you, Judge, I am to let you know approximately the amount of labor involved in fur-
2369 nishing this information?

The MASTER: The amount of labor involved and the cost.

Mr. HILL:

Q. I want to get a little information about this: in making these percentages, are those tons or ton miles?

A. Ton miles?

Q. On both sides?

A. Yes, sir.

Recross-examination.

By Mr. MOORE:

Q. You were asked, Mr. Kimbell, if it would not be necessary to show the character of the tonnage that was moved in interstate traffic in January 1909, in order to balance or explain the statement contained in your testimony as to showing what the intrastate tonnage consisted of:

I want to ask you if there is any connection whatever, in so far as an explanation of the fluctuations are concerned, between the two?

A. Absolutely none.

Q. The revenue shows a certain increase of revenue derived from each kind of traffic?

A. Yes, sir.

Q. And the effect of the increase, or the cause of the increase in each one is independent of the other, is it not?

A. Yes, sir. Those are the two factors on which Judge
2370 Hill based his problem, one an increase of 96.1 per cent on state, and the other an increase of 9.4 per cent in the interstate. Those factors are absolutely determined independent of one another. The wide disparity led me to make an explanation of why the 96.1 per cent was so large, and it developed the fact that that could be large without any change in rates whatever.

Q. I believe you testified that coal was a low rate commodity, did you not, Mr. Kimbell?

A. Yes, it would be.

Q. When is a large volume of coal moved in Arkansas?

A. I am not very familiar with that Judge. I suppose——

Q. Don't you know whether in the summer or winter months?

A. It is used in the winter months and I assume it is probably shipped in summer and stored.

Q. At what season of the year is most of the cotton crop of Arkansas moved?

A. That is moved in the latter months of the year and the early months; from October to February.

Q. Now, without multiplying illustrations, I want to ask you if there is not necessarily large fluctuation in the monthly revenue derived from the operation of the railroad growing out of the character

of tonnage that is moved at different seasons of the year and different months?

A. Yes, sir; I think there is.

Q. That might be the case when the average revenues per
2371 annum, round the period of a year, would not fluctuate a great deal?

A. Yes, sir.

Q. And that is a fact, is it not?

A. That is quite true.

Q. The variations in receipts for short periods like monthly periods, does not indicate large fluctuations in the annual earnings of railroads, does it?

A. Not unless the receipts are light during the entire year.

Q. I am not speaking of that. I mean the various months that constitute the fiscal year. The fact that that varies and fluctuates and the earnings in some months are higher than in others, is not inconsistent with a large degree of uniformity in the annual earnings of railroads?

A. No, sir. The monthly returns are apt to vary considerably and still the annual returns may be normal.

Redirect examination.

By Mr. HILL:

Q. That is true both of state and interstate?

A. Yes, sir, I think so.

Q. Is there about the same fluctuation in interstate and in state?

A. I think so; they travel fairly uniformly.

Q. They go hand in hand, do they?

2372 A. That may not be literally true, but I think they go very well together.

Q. Figuratively speaking, a kind of "Siamese twins"?

A. That, however, is not true of expenses, Judge.

Q. Mr. Kimbell, you stated there was no relation, as I understood it, between these movements in the intrastate business and the movements in the interstate business: is that the way you——

A. Not so far as determining the two independent averages which you used as factors in your problem are concerned. There is no connection.

Q. Is there not supposed to be really a relation between the rates, state and interstate?

A. There is, yes, sir.

Q. Do you know what it is?

A. Know what the relation is?

Q. Yes.

A. It would be very difficult to say. It varies considerably, I guess.

Q. Do you know any body that does know?

A. In a general way I think our traffic men have told you that the relation exists.

Q. Mr. Watson is authority on that proposition?

A. As far as the rate feature goes, yes, sir.

Q. Do you stand by what he says on that subject?
A. I think his testimony should stand on its own bottom. I think it is all right.
2373 Q. I want to know if you have any independent knowledge of that relation, other than what Mr. Watson has given?
A. Yes, I have a general knowledge, to which I think I have testified before, to the effect that there is a relation.
Q. I understand that, but what is it?
A. That is a very difficult thing to say.
Q. I know it is.
A. It has been explained to you by Mr. Laing, who was just on the stand, that his passenger interstate rates were increased gradually, not all at once.
Q. But I am trying to get at how much?
A. All I can say on that, Judge, is that when you find it, I would like to see it.
Q. I have been trying ever since this case began to find it. I want you to refer me to somebody that can give it to me, if you cannot do it yourself. You cannot undertake to do it?
A. No, sir.

2374 J. D. WATSON, a witness of lawful age, being duly produced, sworn and examined, testified on behalf of the defendant as follows:

Direct examination.

By Mr. HILL:

Q. Have you the data ready which I called for heretofore?
A. It was the rate on beer from St. Louis to Little Rock and from Milwaukee to Little Rock, and the divisions of the rate from Milwaukee to Little Rock, via St. Louis. I presume you intended to say East St. Louis. The movement is not via St. Louis.
Q. You mean it would be handled through the Illinois line of the Iron Mountain?
A. It would be handled through East St. Louis. The movement from Milwaukee would not be via St. Louis. It would not cross the river here.
Q. It would run down the Illinois Division of the Iron Mountain, cross the bridge, and then over to Dexter, Missouri, would that be the way?
A. Yes, sir.
Q. And strike the main line of the Iron Mountain at Dexter, Missouri?
A. No, it would strike the Cotton Belt at East St. Louis; from East St. Louis via the Cotton Belt.
Q. Your illustration is on the Cotton Belt?
2375 A. Yes. The rate from St. Louis to Little Rock, carloads, minimum weight 20,000 pounds in wood, and 24,000 pounds in glass, is 27 cents per hundred pounds.
The rate from Milwaukee to Little Rock, subject to the same minimum weight, is 34 cents per hundred pounds. The rate from

Milwaukee to Little Rock would divide to East St. Louis 10.3 cents; south, 23.7 cents.

The next illustration is packing house products:

The rate from St. Louis to Little Rock, carloads, 31 cents per hundred pounds.

The rate from Chicago to Little Rock, 38 cents per hundred pounds. This rate divides to East St. Louis 7.8 cents; south, 30.2 cents.

Q. Is not the local rate from East St. Louis the same as from St. Louis?

A. It is.

Q. Then if you took St. Louis instead of East St. Louis, it would be the same figures?

A. The same figures identically; that makes no difference. I am simply trying to clear you up as to the movement of the beer, which does not move through St. Louis.

Q. I had in mind the Iron Mountain.

A. The next illustration is farm wagons, from Moline, Illinois, to Little Rock: 38 cents per hundred pounds. From St. Louis or East St. Louis to Little Rock, 33 cents per hundred pounds.

The rate from Moline to Little Rock divides to East St.
2376 St. Louis 10 cents, and south 28 cents.

The next illustration was the rate on boots and shoes, from St. Louis to Paragould, Arkansas, which is 81 cents per hundred pounds; that is less than carload. And boots and shoes from St. Louis to Memphis, Tenn., which is 65 cents per hundred pounds.

Q. Would that not apply to carloads where there is L. C. L.?

A. That is an any quantity rate. Packing house products, less than carload, St. Louis to Paragould, fourth class, 43 cents per hundred pounds. I specify the class there for the reason that there are different classes of packing house products in less than carloads, and the fourth class covers the large majority——

Q. That is the principal movement of packing house products?

A. Yes, sir. To Memphis, less than carload would be 26 cents per cwt.

Q. What is it to Paragould?

A. 43 cents.

Q. Is that the same proportion as to carload?

A. The carload to Paragould is 26 cents, and the carload to Memphis is 21 cents.

Q. That Memphis business would go right through Paragould on its way, would it not?

A. With us, yes.

Q. Are those all the illustrations I asked you for?

2377 A. Yes, but I believe the conditions in connection with that should be explained, so you will fully understand.

The rates from St. Louis to Memphis and to all Mississippi River points are governed by conditions that do not control the Arkansas rates. The rates to Memphis in no way control the rates to Arkansas, except it be a combination through Memphis may in some case make a lower rate than the established rate from St. Louis to

points in Arkansas. The rates to Memphis are very low on account of conditions over which the railroads west of the River have no control.

Q. You mean that the rate to Memphis plus the local rate back?

A. No, the rate to Memphis, plus the rate from——

Q. Take Paragould: that would be a back-haul.

A. Yes, but take a station in southern Arkansas, say Hope, for example, would make a lower through rate than the established basis operated by the lines west of the River, under the Western Classification; the rates to Memphis being governed by the steamboats and——

Q. How about an illustration of a shipment between Memphis and Fair Oaks?

A. That would hardly make a lower rate on the Memphis combination, than the straight rate; the distance being so short from Memphis is the reason of that.

2378 Q. That is a junction point, is it not?

A. Yes, but it amounts to very little.

Q. The business at Fair Oaks, I suppose is nothing, but would not that be a base for other rates out of there?

A. No, it happens not.

Q. Usually that is the case?

A. That is the case in some common points, but Fair Oaks is not one of them. Another feature in connection with that is the fact that the rates to Memphis, being a shorter distance, are lower than the rates to New Orleans. In other words, the governing factor is distance, both to meet the water competition——

Q. The governing factor was not distance between Paragould and Memphis?

A. The rates to Memphis have no effect whatever on the rates to Arkansas.

Q. The length of haul had nothing to do with the Memphis-Paragould rate on shoes, as illustrated?

A. It does not affect the rates to Arkansas as compared to rates to Memphis, for the reason that the Memphis rates do not base the rates to Arkansas.

Q. Do I understand that that resolves itself into this: that the element of distance enters into the water rates, but does not enter into railroad rates?

A. The element of distance enters into all rates.

2379 Q. Both water and rail?

A. Yes, sir.

Q. It did not in the Paragould shipment?

A. It does enter into the Paragould rate.

Q. How do you figure that?

A. The rate to Paragould is less than the rate to Brinkley——

Q. It is more than the Memphis rate and Memphis is a longer distance?

A. The rate to Memphis is not in any way governed by the rate to Paragould and vice versa.

Q. But in those two instances which are an illustration, the length of haul cuts very little figure in those rates?

A. The length of the haul cuts no figure as far as the Memphis rate is concerned, with us. We don't make the Memphis rate. We simply meet the competition fixed for us by water and rail.

Q. Then you move traffic on that Memphis rate without regard to the distance?

A. Some of the Memphis rates. There is some of the traffic we cannot participate in.

Q. But all that you do participate in, you move regardless of that, to meet your competitors?

A. To meet competition, yes, sir.

2380 Cross-examination.

By Mr. MOORE:

Q. I wish you would explain what you mean by stating that your road does not participate in some of this Mississippi River business.

A. Well, the best example of it is a concrete case I had yesterday. We were offered a shipment of cement, a number of cars to Memphis. We found that the rate was nine cents. By the time we paid the arbitrary up to and beyond our line there would be nothing left for our services.

That is only one example. There are many, any number of them.

Q. What is the principle upon which traffic men ace in deter? mining when they will not solicit or take business, under conditions such as you had in mind when you made the statement that you did not participate in some business?

A. When the business is unremunerative or will not yield a fair rate for the services we are required to perform after deducting the arbitrary we must pay.

Q. Is that a rule that obtains generally in railroad traffic, in cases where the normal conditions are affected or modified by competitive conditions or commercial conditions, which would render it necessary to modify the normal rates?

A. I think it is a universal rule. It is with our road
2381 and I presume with all other lines.

Q. Do you know from your intercourse with traffic men generally, what the rule is?

A. I should judge, from the various tariffs and the exceptions provided in the tariffs, that that is the case.

Q. Now, state what that competition at Memphis, to which you referred in your testimony in chief, is.

A. The water competition, the short line from St. Louis to Memphis, the Illinois Central.

Q. In what way does that modify conditions from what they would be otherwise?

A. The water lines would make a lower rate than the rail lines there, their cost being less, and necessarily they would establish a

lower rate to secure the business as against the railroad, and the rail lines would meet those rates. If the rail line had terminals of its own in Memphis and had no expensive charges or arbitraries to pay to get the traffic, they could probably afford to meet the River competition; whereas a line situated as the Cotton Belt could not afford to do so.

Q. Is the mileage scale abandoned in fixing rates under such abnormal conditions as you have just been describing, or is it still observed?

A. It is still a controlling factor.

Q. What are the conditions as between St. Louis and New Orleans, we will say? I take it Memphis is one of the important basing points between St. Louis and New Orleans, and New
2382 Orleans, perhaps is the next: to what extent, if any, is the mileage scale observed in fixing rates from St. Louis to Memphis and New Orleans?

A. The water carrier, if he went to New Orleans, for example, would have about twice the mileage than to Memphis, or possibly more, and their rate to New Orleans would be higher than the rate to Memphis, and the railroad lines competing for the traffic would be in the same position. The rates to New Orleans would therefore be higher and to that extent the mileage would indicate conclusively that the length of haul had a great deal to do with the rate applied.

Q. Where the conditions are normal and not modified by unusual commercial or competitive conditions, to what extent is distance a factor in determining the rate of transportation?

A. To a large extent.

Q. Please explain it.

A. Take any tariff that provides rates from a given point to a line of railroad, the longer the distance the greater the rate would be. Now, where a common point happens to intervene and that common point is governed by other conditions aside from the mileage feature, or has conditions aside from the mileage feature, which control the rate, that particular common point may carry a lower rate than the stations on either side of it; but those stations, not being controlled by the commercial or competitive condi-
2383 tions, would still be governed by the mileage feature. In other words, it would be controlled by the mileage.

Q. You mean to say, then, that aside from some special point that was affected by the unusual condition, the rates to intermediate points would still be governed by the mileage scale?

A. To a very large extent, yes. I can give you any number of examples of that.

Q. Give us some, please. I will be glad if you will give us some examples by citing cases that occur in practical operation on the main line of the Iron Mountain and the main line of the Cotton Belt roads, to points in Arkansas.

A. Well, bagging and ties, is a fair example. The rate to Moark (which is the first Arkansas station) from St. Louis, is 17 cents.

The rate to Little Rock—the first station south of Little Rock.

would be 20 cents. The rate to Little Rock would be somewhat lower. I haven't the figures with me, though.

To stations south of Benton the rate would be 24 cents, and as the distance increases the rate increases.

Q. What are the conditions that produce a lower rate to Little Rock than to Benton or Malvern, stations beyond?

A. At Little Rock the distance is shorter, and while at Benton and Malvern you have practically the same competitive conditions you have at Little Rock, that competition is governed also by the mileage basis. They have to haul the business further and
2384 therefore they cannot afford to make as low a rate for the longer as for the shorter distance, and they adjust their rates accordingly.

Q. Do the same factors prevail at Memphis, New Orleans and other points that are governed by water competition?

A. The factor as to distance, yes.

Q. As to the graduation of rates, now?

A. As to that also, the rates being higher for the shorter than for the longer distance—I mean, lower for the shorter than the longer distance.

Q. To what extent does that rule apply to different classes of commodities, high and low classes of commodities?

A. Well, in some cases the low class commodities are grouped in zones. Is that what you mean?

Q. Yes. Go ahead and explain it.

A. Where the zone basis is applied, the rate may be a little high to the first point in the zone and probably low for the last point in the zone, but as a general average the rate for the entire zone would be considered fair.

Q. I will call your attention to an instance that is in evidence here:

It is shown that here is a large territory embraced in the lumber zone extending from some point south of the Arkansas River, perhaps to the Gulf of Mexico:

I wish you would state how those rates compare relatively, in point of reasonableness, at the northern and southern points
2385 in that zone, and the intermediate points, on shipments to commercial centers north, such as St. Louis and Kansas City.

A. Well, from the lumber zone, which starts at Little Rock or the Arkansas River, and goes to the Gulf, the rate from the first stations in the zone—Little Rock, Pine Bluff, etc., may be considered fair rates.

The rates from the lower end of the zone are considered very low.

The rates from the central portion, or the average distance which we haul lumber, are considered reasonably low under the present conditions.

Now, it does not follow that all of the lines that operate from that entire zone, each have those rates. Some of the lines will operate from one point on their own rails, or all points on their

own rails, but I don't believe any one line would operate the rates from all points in the zone, or could afford to do so.

Q. Why?

A. On account of the arbitrary they would have to pay to get the traffic to their rails.

Q. Because it would be unremunerative?

A. Yes, sir.

Q. Do any of the railroads ever indicate on their tariffs, or the sheets that they issue in connection with their tariffs, that they will not handle certain territory, or handle certain parts of that territory?

2386 A. Any common tariff covering several railroads carries an exception to the application of the rates, which shows conclusively that each of the parties to that tariff do not participate in all the rates shown therein, and are not in a position to handle all the traffic covered thereby.

Q. Do you know about the case that came before the Interstate Commerce Commission, in which Oklahoma parties made complaint that the rates to the southern parts of the lumber zone in Oklahoma, extending north, were too high?

Mr. HILL: I am perfectly willing that Mr. Watson be examined on things I bring out, but I do not care to make him your witness in the trial of new matters.

Mr. MOORE: Well, I will withdraw that if you object to it.

Q. Now, Mr. Watson, on your direct examination you were asked to give the rates over the Missouri Pacific Railway, under the joint tariff, from the Illinois coal fields to Little Rock, and I think you showed instances in which higher rates were applied for shorter distances, than the rates for some other points further away from the point of shipment: Will you state, first, whether those conditions are exceptional or not?

A. They are exceptional.

Q. What cause brings that about?

2387 A. I happen to be very familiar with the rate to Little Rock, that is adjusted upon the Memphis combination, the rate to Memphis from the Illinois fields being governed by the condition of water competition, resulting in a rate of $1.00 per ton from the Illinois mines to Memphis.

The rate from Memphis to Little Rock, established by the Rock Island, the short line, based upon the Arkansas rate was $1.25 per ton, making the rate to Little Rock $2.25, which is the actual Memphis combination; and it was necessary for the lines operating direct to use the same basis in order to secure any of that traffic.

The rate to Monroe, Louisiana, which is $2.00 per ton, is a rate established by the one line operating from the Illinois coal fields to Monroe, to meet the rate in effect and operated by the lines from the Alabama district to Monroe, which also has its direct rails from the Alabama district to Monroe. To meet the Alabama competition it was necessary to put the Illinois coal into Monroe on the same basis.

That condition is also true at Tallulah, Louisiana, and points in that immediate vicinity which are in competition with the V. S. & P.

Q. What is the rule among traffic men when conditions of that sort arise, and the rates, due to those competitive conditions, are such that the business could not be carried without loss, or at least on a remunerative basis?

2388 A. The best explanation is this: that the Cotton Belt does not operate a rate from the Illinois mines to Monroe for that very reason—we can't afford to do so, the arbitrary up to and beyond our line being so much that the balance would not justify the services we would perform.

Q. Your attention was called to a number of points in Arkansas and Louisiana, further from the coal fields than Little Rock—Monroe, Louisiana, is one; Tallulah is another, where the rate is the same as Little Rock. It was shown that those shipments pass through the state of Arkansas, but not through Little Rock, but they are a longer distance: does that come within the explanations you have made as to the reasons for this abnormal adjustment of Little Rock rates, as compared with other points?

A. It does. The Iron Mountain reaches the coal fields and the destination points, and it is a one line haul from the coal fields to the destination; they don't divide the revenue with any other line.

Q. And the Little Rock rate is fixed by the conditions you spoke of a little while ago?

A. Yes, and it is considered a very low rate.

Q. You were speaking a while ago about the rate on beer from Milwaukee to St. Louis and East St. Louis.

Is there any terminal service or empty car service at St. Louis which enters into the rate?

2389 A. Yes, there is a terminal service in St. Louis on all beer. There is no beer shipped in East St. Louis that amounts to anything, and in St. Louis there is a terminal charge as well as a river transfer charge, to get it to our tracks.

Q. Empty car service?

A. Yes, sir.

Q. You also testified in your direct examination—your examination in chief, that the rate on shoes and dry goods from St. Louis to Little Rock, was $1.00 per hundred pounds; from St. Louis to Alexandria, $1.25, St. Louis to New Orleans, 90 cents: What brings about that condition?

A. The rate to New Orleans is fixed by water competition and by the direct lines to New Orleans.

The rate to Little Rock is standard first-class, and the rate to Alexandria the same. The rates to Alexandria are governed by conditions which do not govern at Little Rock or New Orleans.

Q. What are they?

A. A combination of locals through some Louisiana point or are fixed by differentials as is Shreveport.

Q. You have already stated, I believe, that the relative rates to which your attention was called in the examination in chief, when your attention was called to certain instances of shipments to Arkan-

sas and points in Louisiana—you have already stated those conditions: I wish you would state the relative volume of railroad
2390 traffic that is affected by those conditions, as to the whole traffic of the Cotton Belt road, so far as you know it, and to the Iron Mountain and other roads which operate in that territory.

A. Upon the Cotton Belt tonnage that is affected by those conditions as to the Memphis and other Mississippi Valley points, it amounts to a very small proportion—less than one per cent.

The Iron Mountain tonnage that would be affected thereby would be relatively the same as to their volume.

In other words, the lines west of the river cannot afford to meet the larger number of the rates that are operated to New Orleans, on the heavy moving commodities.

Q. And therefore they do not attempt to do it?

A. No, they don't.

Q. What lines do carry the most of that business and why?

A. The low grade lines and the short lines, the Illinois Central and the Mobile & Ohio.

Q. Why are they in a condition to handle it?

A. On account of their short mileage and the fact of the volume of tonnage that would be northbound to them. They have to have something to operate southbound and they can afford to handle this business cheaper on account of the direction of their traffic.

Q. What would be the result if they did not handle it?

A. It would go to the water lines. In other words, if they
2391 were to advance their rates——

Q. Is their reciprocal tonnage affected in any way by it?

A. It is affected very materially by it.

Q. Mr. Watson, you have just described the exceptional conditions that affect traffic growing out of the low rates on the Mississippi River and the short lines:

Now, referring more particularly to that class of traffic where that exceptional condition exists and you are forced to modify your basis of rates growing out of the exceptional conditions, what to any extent is the rule as to the classification and the application of rates according to the classification of the commodity, applied on river transportation?

A. I don't believe the river lines have any classification. They usually have a commodity rate.

Q. I mean this: you have in railroad operation, your first, second, third and fourth classes?

A. Yes, sir.

Q. And you charge higher rates for the first and have a descending scale down to the fourth class: what I want to know is if that system of graduation of rates is what is placed by these exceptional conditions as between the different classes of freight transported.

A. To some extent, yes, sir.

Q. To what extent, and how far?

2392 A. In a commodity rate the article is taken out of the classification and a specified rate provided therefor——

Q. Is there any difference made in the application of rates to the

different commodities? You say many of them are taken out of the class rates and put into commodity rates. Is there any difference in application of rates to different kinds of commodities? I mean, in that class of traffic which you charge a rate for—we will say dense articles, do you charge a different rate for heavy, dense articles than you do for lighter and more valuable articles?

A. That particular feature of it has to be taken into consideration by the steamboats and water carriers as well as by the rail carriers. It costs them more to handle that particular class of business. The heavier article is the less cost per ton. For instance, the steamboats charging for wooden ware or other light articles make their charges accordingly, but if they were going to handle grain or something that is heavier they are willing to apply a lower rate to it.

Q. Is that not the same distinction which you drew on a former examination, as to the rates being graduated according to the character of the article, the bulk, weight, density and value?

A. Steamboat lines use approximately the same method for graduating their rates as the railroads do.

Q. Does that system prevail in graduating rates as to traffic
2393 which is affected by the river conditions on the railroads?

A. Yes, it does.

Q. That practice is not eliminated, then, by these exceptional conditions you speak of?

A. It is not.

Redirect examination.

By Mr. HILL:

Q. Is there river classification permitted?

A. Not that I ever heard of.

Q. They make a package rate, don't they?

A. They make a package rate, a rate in cents per hundred pounds, for instance, so many cents per thousand for brick.

Q. They make a whiskey rate, do they not?

A. A rate per barrel.

Q. Then you adjust your rate in the western classification according to the river——

A. I don't understand what you mean.

Q. I understood your answer to Mr. Moore amounted to the fact that you took into consideration the classification the steamboats were making when you took your rates out of the class list and put them in the commodity list. Do you mean river classification?

A. River rates, not classification.

Q. It amounts to the same thing, does it not?

A. Yes, sir.

2394 Q. You do not like the term of "river classification?"

A. I do not want to talk about something I don't know anything about.

Q. Do the steamboat men get together like they do in the railroad lines and have a classification committee?

A. I have never heard of a steamboat classification. I have seen steamboat tariffs, but not classifications. They usually adopt the

southern or western or whatever classification happens to be operated.

Q. The river traffic runs on a package basis?

A. They have a great many commodities that are based upon package rates.

Q. Does not that river rate on all class rates and many of the commodities applied from St. Louis which you have given, also apply to Vicksburg, Greenville, Helena, and other points?

A. That is true.

Q. Where the distance is very different and much less than to New Orleans?

A. The distance is much less than New Orleans but the distance has a good deal to——

Q. Do these points I have referred to Helena, Greensville and Vicksburg, take the New Orleans rate?

A. No, there are quite a number of differences and exceptions in the tariff.

Q. As a general proposition that is the rule, is it not?

A. I cannot say generally.

2395 Q. Class rates all do, don't they?

A. Class rates do.

Q. And most, if not all, the commodities do, do they not?

A. I could not say that without examining the tariff carefully. My recollection is there are quite a number of exceptions.

Q. It is the rule to change them or to make exceptions, is that about the way to put it?

A. As far as Helena, Vicksburg and New Orleans are concerned, yes.

Q. You refered to this terminal charge on beer that you were going to ship from St. Louis to Little Rock there would be the same terminal charge on that beer that you shipped to New Orleans, at a less rate, would there not?

A. Yes, sir.

Q. I did not understand about that one per cent that you referred to in your examination a while ago. Do you mean that the traffic from St. Louis to New Orleans would be one per cent?

A. No, I mean that the traffic that the St. Louis Southwestern would move from St. Louis to Mississippi Valley points, including New Orleans and Memphis, would be less than one per cent of our traffic. In other words, we handle very little of it.

Q. They are dominated by the New Orleans rate?

A. Very little.

2396 Q. How much of your traffic is dominated by the Memphis rate?

A. Very little; Memphis, practically, alone.

Q. I thought from your testimony a little while ago that there were a great many combinations made on the Memphis rate?

A. No, I said the only combinations possibly would be the combinations in southern Arkansas and then it would be only in cases where the classification to Memphis was different than the classification to Arkansas on account of the class being different.

Q. What is the volume of traffic of the Iron Mountain that is dominated by the Memphis rate?

A. I don't know positively, but my understanding from the tariffs themselves would be that it amounted to very little.

Q. Is not all the traffic from St. Louis to Arkansas common points based on a differential——

A. The rates are differentially adjusted as to Memphis but they are not based on Memphis.

Q. What are they based on?

A. They are not based on Memphis and they are differertially adjusted over Memphis; there is a difference between a differential adjustment and a combination of locals.

Q. If there is a differential adjustment between St. Louis and Memphis that would control the movement from St. Louis
2397 to the Arkansas common points, would it not?

A. Not necessarily control it, but establish a parity as between the rates from Memphis to Arkansas points and from St. Louis to Arkansas points.

Q. That parity would be a fixed quantity?

A. It is a fixed quantity.

Q. It would not be a parity then, it would be a combination of those rates?

A. The fixing of those rates establishes the parity.

Q. It is a question of a different use of terms but you get the same proposition?

—. ——.

Recross-examination.

By Mr. MOORE:

Q. In order to clear up something that there may be some confusion about, I want to ask you in regard to the basis of rates:

I want to ask you if the rates from St. Louis to Arkansas points are not made on differentials over the rate from Memphis to Arkansas and not on the rates to Memphis, that is, from St. Louis to Memphis?

A. The rates from St. Louis to Memphis do not enter into the adjustment to points in Arkansas. The rates from Memphis to Arkansas points plus certain differentials established the rate from St. Louis to Arkansas points.

2398 JAMES C. LINCOLN, a witness of lawful age, being duly produced, sworn and examined on the part of the defendant, testified as follows:

Direct examination.

By Mr. HILL:

Q. Mr. Lincoln, will you please state your name, residence and occupation?

A. James C. Lincoln; St. Louis, Missouri; Commissioner of the Merchants Exchange Traffic Bureau.

Q. Before you were commissioner of the Merchants Traffic Bureau, Mr. Lincoln, in what occupation were you engaged?

A. Just before accepting my present position, I was with the Missouri Pacific Railway System, as Assistant Freight Traffic Manager.

Q. How long experience did you have as Assistant Freight Traffic Manager, or in the traffic department of the Railroad?

A. My entire life almost has been spent in the railway service. I entered the service in 1876 and left it in 1906.

Q. In what department of the service has your work been, Mr. Lincoln?

A. My original work was that of a general utility boy around headquarters. I was then in the office of the Superintendent
2399 of car service and from that in the office of the Master of Transportation; then in the General Freight and Passenger office as chief clerk. That, however, was in my association with the St. Joseph & Denver City Railway, now the St. Joseph & Grand Island Railroad, which company I left in September, 1888, to accept service with the Missouri Pacific Company.

I served the Missouri Pacific Company at Atchison, Kansas, for one year, in charge of their Central Branch and their Nebraska Division, in the Traffic Department. I then came to headquarters and served through the various offices from Assistant Freight Agent to Assistant General Traffic Manager.

Q. Was the St. Louis Iron Mountain & Southern a part of the system that you served?

A. Yes, sir.

Q. Are your duties in your present position such as keep you in touch and familiar with the rates prevailing in the southwestern country?

A. Quite generally, yes, sir. I have to keep in touch with the general rate adjustment to this entire section. I have to watch the adjustment from other markets in competition with St. Louis.

Q. In what year did you leave the railroad service?

A. In May, 1906.

Q. Mr. Lincoln, I wish you would state from your familiarity with the making of interstate rates, the controlling factors in the making of such rates?

2400 A. The controlling factors in the making of rates, state or interstate, or the foundation upon which a rate is made, is the maximum rate allowed by law, either state or interstate, or on through business the combination of state rates. They are departed from as commercial conditions require.

Q. What consideration in the making of interstate rates is usually given to the cost of actual service performed in transporting the traffic under the given rates?

A. Very little consideration is given to the actual cost of the service in making rates. Rates are made generally based upon competition or commercial conditions. The traffic man necessarily should be informed to a greater or lesser extent, as to what it costs, but in the making of any individual rate he is unable to determine what is the cost of handling that individual traffic.

Q. What information or statistics do the railroad companies have before the traffic men when they make rates, that is, as to costs?

A. Well, there are all kinds of statistics that reach a traffic man, or the traffic man can avail himself of them if he wishes to—as to the movement of the tonnage, the various commodities making up the tonnage, car movement and the averages. The ordinary traffic man is not well versed upon the expense of conducting the transportation as to any commodity on any division, but deals with totals.

Q. In fact, there are no statistics made by the railroad com-
2401 panies operating in this immediate section of the southwest that have the cost of transportation of any given commodities, are there?

A. Not that I know of. I never saw them.

Q. In your experience you did not meet such?

A. Not such statistics.

Q. In fixing rates from large distributing points, say St. Louis to Arkansas, and through Arkansas to points beyond, say New Orleans and the Texas common points on the other side, how largely, if at all, does the cost of the length of the haul from Arkansas points to New Orleans and to Texas common points, determine the rates that are fixed for these various movements?

A. In the fixing of rates from St. Louis to New Orleans or from St. Louis to Texas points, or from St. Louis to Little Rock, to what extent do the Arkansas rates enter as a factor?

Q. No, I say, to what extent does the length of the haul to these respective points, and the cost of the service, enter into making those rates, from St. Louis to New Orleans, from St. Louis to Texas points, or St. Louis to Little Rock; what consideration is given the cost of the service and length of the haul in fixing those rates?

A. Length of haul in the state or entire haul?

Q. Well, I will state it broadly: the length of the haul at all. What consideration is given to that in fixing such rates as I have
2402 mentioned.

A. Except in a very remote way, consideration is not given to the expense of conducting the transportation in making the rates from St. Louis to New Orleans; from St. Louis to Little Rock, or from St. Louis to Texas points.

Q. Mr. Lincoln, if you are called upon to divide the expense of traffic, state and interstate, under proper conditions, what formula would you use, or on what method would you proceed in dividing it?

A. That is a very, very broad question,—The question of the division of the expenses as between state and interstate. I have never been able to devise, or in my judgment, seen devised any method by which the expenses of the service could be separated.

I have had my views, but have never worked them out.

Q. Are there any controlling factors in the difference of the service, state or interstate, or the difference in long hauls and short hauls?

A. That is in connection with expenses?

Q. Yes.

A. In connection with the expenses of conducting transportation

there are controlling factors in the way of terminal expenses. There are controlling factors in the way of these short hauls being more expensive than the long hauls.

Q. How is that taken care of in practical railroading?

2403 A. In the adjustment of rates.

Q. The evidence in this case shows this—I will just speak in round figures—that the revenue per ton per mile on the state traffic is 12 mills and the revenue per ton per mile on the interstate traffic is 6 mills:

Do those statistics indicate to your mind that this extra cost for short hauls had been taken care of in the rates?

A. This would indicate to my mind that in a measure the short haul has been taken care of in the rate by the fact that the average rate per ton per mile is higher than for the longer haul.

Q. And that is the way, as I understand you, in which this extra cost of the short haul, terminals, etc., is taken care of?

A. It is contemplated in the rate adjustment, taken care of by the higher rates for the shorter hauls than for the longer hauls.

Cross-examination.

By Mr. MOORE:

Q. Mr. Lincoln, you think the length of haul affects the expense of conducting traffic, do you not?

A. Unquestionably the longer the haul the less the cost should be per ton per mile.

Q. What are the reasons that enter into and cause that result?

A. What are the reasons?

2404 Q. The causes of that.

A. The causes are the continuous transportation over divisions and that after freight is in movement it would be hauled greater distances without a progressive rate of expense for each mile hauled.

Q. There are two classes of interstate traffic; from one state into another, say adjoining states, and that which crosses states; the latter branch has been termed "trans-state" traffic in this case. A movement may originate in St. Louis and terminate in Galveston and it is a trans-state shipment in Arkansas because it has no origin or destination there.

To what extent does that enter into and affect the relative cost of transportation as between interstate, including that in interstate on one hand and intrastate on the other, in the state of Arkansas?

A. Well, I would say this: that business can be conducted with less expense which is the average shown by the result in the rate per ton per mile for the longer haul from St. Louis to Galveston than for a short haul within that distance, passing over the same line and in the same direction.

Q. Is there any other element, that in your opinion, would enter into the relative difference in expense than the short and long haul?

A. All things being equal, no.

Q. What is the service rendered with relation to trans-state traffic and interstate traffic, in the more limited sense that I ex-
2405 plained a while ago, in the State of Arkansas?

A. What is the relative service as between the trans-state and the interstate?

Q. Yes, in the state of Arkansas?

A. Well, within the state, on state traffic, terminal expenses are embraced in the rates.

Q. On what traffic?

A. On the intrastate or short haul traffic. The same terminal expenses are embraced in a rate on an average of a long haul. The continuous movement of freight for a long haul enables—when there is a volume of business to move—the conduct of that business cheaper than the short hauls, because the short haul is usually handled in local trains.

Q. Will you charge any terminal service on a trans-state shipment to the expense of conducting traffic in Arkansas?

A. No, there should be no expense charged in Arkansas for the terminal service.

Q. When you say there is a terminal service you mean the traffic itself requires a terminal service?

A. Yes, originally; there would be no terminal service on through business.

Q. How would it be in interstate traffic as distinguished from trans-state, from St. Louis to Little Rock?

A. There would be one service there in the state and one out of the state.

Q. How is it usually in state business?

2406 A. There are two terminal services in the state.

Q. Is there any material difference in the expense of conducting intrastate and interstate traffic, referring now to the state of Arkansas, without having to repeat that each time?

A. No.

Q. You think there is no very material difference in expense?

A. In handling state and interstate business?

Q. Yes.

A. No, sir.

Q. On what do you base that view, Mr. Lincoln, that there is no material difference?

A. I base that view upon the fact that an imaginary line does not increase expense. I support the proposition that there is a greater expense attached to the handling of short haul business, state or interstate, than on long haul business, state or interstate.

Q. Do you know the manner of handling state business that prevails usually on through lines of railroad, and particularly on the Iron Mountain in Arkansas?

A. That handles state business?

Q. Yes.

A. Why we have at Knoebel, Arkansas, we will say, a carload of lumber that is going to Little Rock, Arkansas. Now, the expense

attached to the movement of that car is the switching serv-
2407 ice at Knoebel in placing the car for loading by the shipper and in the placing of the car at Little Rock to the industry or team tracks for the unloading; two terminal expenses.

The expense of the movement of that car is no greater from Knoebel to Little Rock than it would be through Knoebel and Little Rock from a point north of Knoebel in Arkansas to a point south of Little Rock, Arkansas.

Q. Is the local business, intrastate business, conducted on local or through trains usually?

A. Ordinarily, all short haul business is conducted on local trains and the long haul business on through trains, irrespective of whether state or interstate.

Q. What proportion of state business is handled on through trains, would you say?

A. In Arkansas?

Q. Yes.

A. I doubt if there is a very great amount of Arkansas local traffic, that is, state business, handled on through trains. I imagine most of it is short haul and therefore would go on local trains.

Q. The statistics in this case show that the average haul, intrastate haul in Arkansas, is about 71 miles, and the interstate haul about 224 miles:

Now, what proportion of the interstate business would you say is handled on local trains?

A. What proportion of the interstate business in Arkansas
2408 is handled on local trains? From my general knowledge of the situation I would not say that there was a very large volume of interstate business handled on local trains. Of course, there is business out of Memphis, Tennessee, going into Arkansas, and considerable would be handled on local trains.

There is business out of St. Louis to Arkansas points that would be handled on local trains. And there is business out of Fort Smith to Arkansas points, that would be handled on local trains. There is business out of Texarkana that would be handled on local trains.

Q. You say business from St. Louis to Arkansas would be handled on local trains?

A. Yes, sir.

Q. Not on through trains?

A. On through trains to Poplar Bluff and local beyond, or through trains to the division points and local beyond.

Q. Suppose there is a car or train made up to go south from St. Louis to Little Rock; another to Texarkana and another to some point in Texas, perhaps: how is that freight handled?

A. Carload freight?

Q. Yes.

A. It should be and probably is handled on through trains.

Q. Which is the greater volume, the carload or less than
2409 carload, of interstate freight?

A. Interstate freight?

Q. Yes.

A. I imagine the carload business would be the greater volume of interstate business.

Q. It would be very much greater, would it not?

A. I think it would be materially greater. I have not the statistics on that.

Q. The statistics in this case show that 51% of the total traffic of the Iron Mountain Railroad Company consists of trans-state traffic and that 49 and a fraction percent is made up of interstate, and of the latter—according to my recollection—about 16% is state and the difference between that and 51% is interstate. I think I have stated it about correctly. I am not giving fractions.

Now, with those facts before you, what in your judgment would be the proportion of the entire interstate including in that term trans-state business that would be conducted on through trains rather than local trains?

A. Well, the percentages would indicate, and I think it is without question, that the trans-state traffic is all handled on through trains.

Q. You take that out at once?

A. The interstate traffic is very largely handled on through trains. State traffic is handled on local trains, very largely.

2410 Q. That is about as nearly as you can approximate it, I suppose?

A. About. I am speaking of Arkansas.

Q. This is all confined to Arkansas whether I so state or not.

Has your experience in railroad work been such as to qualify you to speak as to the difference in the expense of operating the local as distinguished from the through trains, in Arkansas?

A. No, I would not say that I could qualify myself to testify on the question of operating expenses. I have a general knowledge of it which I have ascertained by analyzing operating sheets.

Q. Then I will not ask you to go into it in great detail. But you know in a general way that there is a very large increased expense involved in the operation of local as distinguished from through trains?

A. There is a larger expense in handling local as compared with through trains.

Q. I would like you to state, in a general way, what produces that increased expense in the operation of local trains?

A. The increased expense in connection with the operation of local trains is the constant service that is required at the local points as they go along, in stopping trains and starting trains, as

2411 well as the switching service. There is also some additional expense attached to the conduct of the trains in the way of expense of employés' overtime, usually.

Q. Is there any other element of additional expense in connection with the labor feature, or are you familiar with that?

A. I am not.

Q. I mean, are the wages paid operatives on the local trains higher than wages paid on through trains?

A. I thought I covered that in increased cost of the labor on trains?

Q. You confined it in your answer to overtime but I mean now in the wage scale, the rate of wages paid?

A. I am not familiar enough with the wage scale to speak on that point. Some of those are based on the runs, allowing a man to make a certain amount for a certain run, on a mileage.

Q. You would say then, that there is very considerable increase of expense in the operation of local freight trains over through trains, would you not, Mr. Lincoln?

A. No, I would not say it was so considerable. When I say that, Judge, I do not want to be misunderstood in it.

Q. And I do not want to frame my question so as to mislead you.

A. I do not want to be misunderstood in connection with the operation of the local trains. The local train is handling
2412 interstate and state business at the same time; the expense goes to both.

Q. I am not speaking now of expense as applied to state and interstate. I am speaking of operating local——

A. The expense of operating the local trains is greater than the expense of operating the through trains.

Q. Is it not very considerably greater?

A. I don't think it is, but I am not competent to testify on the measure of it.

Q. You would not want to base an opinion on it?

A. I prefer not, if it be a final opinion.

Q. Let me ask you another branch of it: are you familiar with the manner of handling less than carload freights as distinguished from carload freights?

A. Oh, yes, sir.

Q. Is there any difference of expense growing out of the manner of handling those two classes of freight?

A. There is an additional expense upon the carrier in handling less than carload freight.

Q. What does that consist of?

A. They receive it at the station; they load it into the cars and there is a trucking and handling and loading expense at the station, in addition to that of the carload shipments; the carload shipments being handled by the shipper or receiver, and the less than carload being handled by the railroad.

Q. That is one very important element, too, is it not?

2413 A. Yes, sir, it is a very important element.

Q. Is there not another important element of added clerical expenses growing out of the fact that less than carload lots involve a larger number of way-bills?

A. There is an increased expense and a material expense in connection with handling less than carload business, in the way of way bills. It has to be way-billed and the way bills have to carry the description of the article shipped. The bills of lading, you understand, they do not have anything to do with them; the shipper make- out the bills of lading.

Q. I understand about the bills of lading, but the waybilling is done by the railroad, is it not?

A. Yes, sir.

Q. It is in evidence in this case that there are some carload shipments sometimes which involve 20, 30 or 40 different packages, maybe more; each one has to be billed separately to its destination, does it not?

A. No, one waybill is made for the entire consignment, from one consignor to one consignee.

Q. Yes, but suppose it goes to twenty different consignees?

A. Then there would be twenty different waybills; possibly there may not be. I have seen billings made on one waybill—from St. Louis, we will say, to Little Rock—of various consignments
2414 on one way-bills. However, there will be a separate expense bill issued.

Q. You have now in mind less than carload, interstate?

A. I have in mind all less than carload business.

Q. Let us take a local down in Arkansas: the train starts out at Little Rock on the main branch, we will say: say it has two carloads of less than carload freight—to illustrate my point better I will take one car—there is a car ladened with goods for Benton, for Traskwood, for Bryan and Malvern, Benton and Malvern being the most northern and southern and being about twenty or twenty-five miles apart. There we have four destinations. In that case, Mr. Lincoln, to distinguish it from the usual practice in interstate, that probably would consist of a great many shipments to different persons?

A. Yes, sir.

Q. It would be likely there would be a greater variety of shippers and consignees than there would in an interstate less than carload, would it not?

A. I don't know whether it would be a greater variety, but there is quite a variety.

Q. Now, all of that involves a further and considerable expense?

A. It involves an expense.

Q. Is there any expense growing out of that separate package movement in less than carload lots at the terminal
2415 station?

A. There is an additional expense in the handling of less than carload lots at the terminal station in the way of handling.

Q. As well as the originating station?

A. Yes, in the way-billing and the expense-billing of it.

Q. There is another feature of the operation of local trains. That is what is known as the "peddling trains": do you know what I mean, when I say peddling trains—a train that has to stop at all the stations for the purpose of delivering package freight carried in less than carload? That is very largely local freight, is it not?

A. Yes, that is local freight.

Q. Is not a very large part of the expense incident to running local trains resultant from that peddling business which necessitates the stopping of trains and perhaps the side tracking and the switching——

A. That, I stated, covered the extra expense of handling local trains.

Q. There is another feature I want to call your attention to while we are on this subject:

I told you a while ago that the statistics of the Iron Mountain in evidence in this case, show the average length of haul on interstate business to be 224 miles—I include all interstate——

2416 A. I understand.

Q. Now, is it not a fact that the trans-state movement if you were to segregate it from the other movements, would be very much longer than the state movement—I mean the interstate movement, in the state of Arkansas?

A. The average movement of the trans-state shipment would be greater than the average interstate shipment.

Q. The statistics to which I refer take no account of any part of the haul of trans-state traffic outside of the state of Arkansas. It may originate in St. Louis and go 150 or 200 miles before reaching Arkansas, and go 500 miles after leaving Arkansas, but that is not taken into account in these statistics. If you add the total length of haul of trans-state business and bring that into comparison, it would make the average haul very much more than the amount I told you, would it not?

A. I am not familiar with the statistics. I would say, of course, that the average length of a haul on trans-state business would be materially greater than the average length of the haul on an interstate shipment, as the average length of haul on interstate shipment may be greater than the average length for state shipment.

Q. But the point I want is this:

If you eliminate that part of the movement of the trans-state business which is outside of the state of Arkansas and con-

2417 fine it to the haul in that state, then you reduce very materially the average of what the total length of haul would be on that business, that part of the movement outside of Arkansas.

A. Certainly, it would.

Q. Is it not a fact in all railroad practice that the rates diminish as the length of haul increases?

A. That is the common theory and the common practice.

Q. Now, when Judge Hill tells you that the average revenue per ton per mile on state freight is 12 mills and on interstate freight 6 mills, is not a very large part of that difference accounted for by the fact that you have just stated—that is, that the rate diminishes as the length of haul increases in view of the fact that the length of haul is as 71 is to 224, and if you were to give the trans-state movement its full effect, would be very much larger; does not the increase in the length of haul——

A. The increased length of haul tends to reduce the average rate per ton per mile. That is the accepted theory and is the general result.

Q. Then if we were to take the revenue as representing rates the difference would be accounted for in that way, would it not, Mr. Lincoln?

A. The difference in the revenue?

Q. If you take the revenue which you heard represented to you, that would be largely accounted for in that way?

A. The increase in the revenue per ton per mile for
2418 short hauls as compared with the long haul is, of course, created by the difference in the rates.

Q. If you take it by the difference in the rates it would be accounted for very largely by the difference in the length of the haul?

A. Yes, sir.

Q. It would be diminished and the——

A. The rates are higher per ton per mile for the shorter than the longer haul.

Q. Is it a fact that the revenue per ton per mile represents the rates and affects the rates in view of the fact that when you take the receipts per ton per mile you make no distinction as to the commodities or length of haul, but the whole thing is just massed on one common average and put on a common level, disregarding all distinction of class of freight, and all distinction of rates and all distinctions of those elements that enter into the fixing of the rates? Is it not a fact that it reflects more the character of the traffic that is handled than it does the rate?

A. Well, the average revenue per ton per mile, of course, is the average of your total earnings all massed together, striking a general average, and it varies somewhat according as the commodity movement may vary or the character of the traffic may change. The test has been used but I do not know how correct it is.

Q. But it has not been used for the purpose of de-
2419 termining rates except in the aggregate, the total body of rates?

A. The total body of rates. One of the things that must be brought before a man in making rates is, what are the average earnings and what is the average cost.

Q. Let me ask you, Mr. Lincoln, is it not a fact that it might occur and does occur frequently, that you take two different periods of the year—take a month representing the movement of freight which characterizes the movement of that particular period, might it not be that a shifting of the tonnage of traffic—or whatever term you use—you understand what I mean——

A. Yes, sir.

Q. Might account for the very large difference in the earnings per ton per mile without there being any difference at all in the rates.

A. It would be—one commodity may predominate in one season and the next season there would be none, and another commodity takes——

Q. That is a rule that is generally recognized in all railroad circles I believe.

A. Yes, sir.

Q. You spoke about the rates, state and interstate; is it not a fact, Mr. Lincoln, when you come to compare state and interstate rates on the mileage scale for similar distances, that the state rate is as low or lower than the interstate rate?

A. Not generally.

2420 Q. I want to call your attention to——

A. That is not generally the case.

Q. Now, Mr. Lincoln, I will ask you to look at exhibit 37 filed by the plaintiff in this case and state what that shows to be the relation between state and interstate rates for the same distances; that is, the state rate in Arkansas and the interstate rate.

Mr. HILL: I believe I will object to that question. It is not cross-examination, and it is taking Mr. Lincoln into something that would not be fair unless he had Mr. Perkins' testimony. If Mr. Lincoln has the time to read that over——

Mr. MOORE: It is distinctly and directly cross-examination because you asked Mr. Lincoln the question if state rates were not enough higher to make up the difference in the expense, and that is in response to that and it is directly cross-examination.

Mr. HILL: This is a comparative table that Mr. Perkins admitted very little traffic moved under.

The MASTER: Go on.

A. It shows generally that the rates on these commodities between points in Arkansas are lower than on the same commodities between points in other states than on the comparisons used for interstate.

Q. Mr. Lincoln, don't the commodities that are listed on that exhibit constitute a large volume of business?

2421 A. Well, brick is a large movement and usually goes under commodity tariffs and not distance tariffs.

Coal is a large movement and interstate moves under commodity tariffs and not distance tariffs.

There is a very large movement of cement, nearly all of which moves on commodity rates.

Cord wood I have no information on.

Grain, ordinarily does not move on distance tariff, but on commodity or transit rates.

Hay moves more nearly on the distance tariff, state business usually on distance tariff.

Lumber ordinarily moves on commodity rates.

Salt moves on commodity rates.

Sand moves on commodity rates.

Stone ordinarily moves on commodity rates.

The comparisons are not those upon which you can very well base a conclusion, as to the interstate or even as to the state rates in other points, except as a paper proposition.

Q. That does show the rates on those commodities in the state for short distance and about the average of state haul and also for the interstate movement on short corresponding hauls.

A. No, Judge—I have no doubt that the statement is correct, absolutely none.

That these are based upon the distance tariffs of the re-

2422 spective states I have no doubt that such is the fact as to many of these commodities, in fact all of them, the rates generally in Arkansas are lower than the other states. As to the

computation upon which the interstate rates are made I do not know anything about that.

Q. Assuming it is true and correct on the face of it, it shows that for the same distance the state rate is lower than on the interstate on those commodities that are set out here?

A. If the statement is correct and the business moves under those rates, yes, sir.

Q. Taking that generally and in the aggregate, does that not represent a large movement?

A. The commodities represented by the statement represent a large movement of the traffic.

Q. Mr. Lincoln, are you familiar with the ruling of the interstate commerce commission under which they take the sum of the locals of the different states as prima facie evidence of the interstate rate?

A. I am very familiar with the ruling. They hold a through rate should not exceed the combination of locals and where a through rate does exceed those they will hold prima facie that the through rate is unreasonable.

Q. That shows that they recognize the relation between the state and interstate rates, does it not? Is not the effect of that to
2423 establish kind of a parity between that part of the interstate rate as applies in each state with the state rate?

A. From my knowledge and information, the way that question arose was as to through rates in cases of combinations on terminal points and relate- to interstate business rating. I never construed it or considered it as setting up any connection with state rates.

Q. Is it not obvious on the face of it a recognition that there ought to be equitably and in justice, a relation between the interstate rate and the state rate? That is to say, the return of an interstate rate which exceeds the sum of the state rates is unreasonable within itself?

A. Where the combination of two rates are lower than the through rate they point out that that seems to be an unreasonable rate.

Q. That is in itself a recognition to some extent of the relation, that there should be a relation in the adjustment of the two classes of rates.

A. No, I do not think so. I only had it in mind as the measure for——

Q. Does not that take as a prime facie the state rates as a measure for the reasonableness of the interstate rate?

A. If the state rate happens to be on two movements to make up the through movement——

Q. That is what I mean.

A. —they do that as to state and interstate. It is a com-
2424 bination of two interstate rates, or a combination of interstate and state rate, as compared with the through rate.

Q. Is it not a fact, Mr. Lincoln, that state freights are as a rule loaded lighter in the cars than interstate freights?

A. As to commodities?

Q. As to whatever the contents of the car may be. I will call

your attention to the fact that the evidence in this case is that the average loading of the local car engaged in local service is from three to five tons, I think, and in interstate it is——

A. You are speaking of less than car-load?

Q. Yes.

A. That is the reason I asked whether you referred to commodities or not. The average loading of merchandise in less than car loads is less for the shorter haul than it is for the longer haul.

Q. That in effect results in the impairment of the efficiency of the cars that engage in local traffic, does it not, and therefore a corresponding increase in the——

A. Yes, all the traffic derived from that is not as great.

Q. Well, railroad operators seek, as a matter of economy, to adjust their business so as to load the cars as nearly as possible to their full capacity?

2425 A. That is the object and a very proper object.

Q. To get the full efficiency of the car service?

A. Yes sir.

Q. Is not that also true of commodities in car loads?

A. As to car load commodities?

Q. Yes. I mean this: taking the entire tonnage hauled by local and through trains, the relative proportion—the percent of the local tonnage moved on local trains, that is, car load—or rather the ratio of the car load tonnage moved on local trains, to the entire car load movement, state and interstate, would not the comparison to which I call your attention——

A. Would not the average loading of a car on an interstate haul be greater than on a state haul?

Q. Yes.

A. I think it would be some greater, the average loading on interstate than the state haul, because the interstate haul very largely represents business moving from manufacturers to jobbers—that is, as to merchandise; but as to commodities, such as lumber, grain and articles of that kind, I really see very little difference in the loading. I will say that as to grain my experience is that loading grain is just as heavy on the short as on the long haul movement—from St. Louis.

Q. Do you know how it is done in Arkansas?

2426 A. I will apprehend that the average car loading outbound in Arkansas will be probably lower than the inbound movement, state or interstate.

Q. It is a fact that all railroad men recognize that in these heavy grain trains from the Northwest down into that territory the cars are loaded to the full capacity?

A. That is the accepted basis now.

Q. You are aware that for instance if a local man at Little Rock in loading his car out to his customers he will perhaps load one car to a dozen consignees that represents the same grain that is brought in on the car from Kansas City.

A. No, I hardly think that. I think that he loads out a lighter car than he receives, but not to—the car will come in first, probably

from the country—into Little Rock with 60,000 pounds of grain in it, and it may contain only 40,000 going out.

Q. Now there is another case of where the efficiency of the car is lost to a large extent, say one-third.

A. Yes, but that is an interstate movement.

Q. Whatever you term it.

A. Yes, but it is an interstate movement; it is not a local movement.

Q. What is the proportion of empty car movement on local and through trains?

A. I could not answer that now. I have not been in the
2427 railway service for four years and I am not informed on that.

Q. Mr. Lincoln, you stated in your examination in chief that one of the principal factors in rate making was the maximum rate allowed by law:

That grows to some extent, does it not, out of the low rates prescribed by state commissions?

A. Well, answering the last part of your question first, I will not say whether the state rates were too high, or too low, but the maximum rates fixed in the state become the measure from which rates would be made and under *to* ordinary conditions will not be made lower unless there are commercial or competitive conditions requiring them to be made lower.

Q. You are speaking of interstate rates in relation as to state rates?

A. As to state rates. Now, as to an interstate shipment, you take the combination of the two state rates and you add them together. I am speaking of your system in the West more generally of state rates and interstate rates.

Q. In that sense if you say the law fixes the maximum for interstate as well as state——

A. In that sense because we cannot very well charge more for the through shipment than the two combined locals. Of course, the Commission fixes the maximum rates in its orders; the measure of the rate as to how high but not as to how low.

2428 Q. But the Interstate Commerce Commission in particular instances of complaint——

A. That is all on complaint.

Q. Upon what do you then base your assumption that the maximum interstate rates are fixed by the law?

A. I explained that the maximum interstate rates were fixed by law—that is, the maximum of the interstate rates are fixed by the law, because we cannot exceed those two component parts. Of course, Judge Moore, our present system of interstate rates has been one of evolution. It was not established today or yesterday, or twenty years ago. It was established a great many years ago.

Now, they have been controlled either by a maximum scale rate, or by competitive conditions, or by commercial conditions.

For example, the rates from St. Louis to what is known as trans-Missouri territory—Kansas and Nebraska is the trans-Missouri territory—when the Nebraska Legislature reduced its rates in the

State of Nebraska it reduced the rates from Omaha and immediately that reduced the interstate rates from Chicago and St. Louis so as not to exceed the combination, the rates having been made upon the old combination, generally speaking.

The same was true as to Kansas. When the rates in Kansas were reduced it then reduced the interstate rates by reason of the
2429 combination through Kansas City—although some of the rates were made lower than the combination—but by reason of the reduction in Kansas there was another readjustment.

The rates into Arkansas from interstate points were really affected by your Arkansas tariff. Rates from Bridge Junction to Little Rock that fixed the rates you might say from Memphis to Little Rock.

Then there were commercial conditions that required certain other adjustments from New Orleans—the rate from St. Louis to Little Rock and I think Ft. Smith. I have been out of the service four years and I am not entirely familiar with that, but I think the Ft. Smith and Van Buren rates are made with respect to the Little Rock rate, so if the Little Rock rate was disturbed by that factor it disturbed the interstate rate.

That is why I say you aim to get all you can. Every traffic man does that. I do not mean by saying that, that he will stifle business at all. He must have in mind the movement of business and the commercial necessities of the community he goes through. If he put the rates too high he might as well not have a railroad at all but the measure of our rates necessarily has some local obligation as a maximum.

Q. Now then as I understand you, the rule is what you have stated, that is to say as to the maximum rates, and that rule is determined how in those exceptional cases brought about
2430 by competitive and commercial conditions?

A. They have been brought about by competitive and commercial conditions——

Q. And they are treated as exceptions to the rule?

A. They are all exceptions to the rule and I would say that generally, as to interstate traffic, you do make an exception to the rule because of the force of competition as between communities.

Q. That is forced upon the railroad operators, is it not?

A. The competition forces the adjustment.

Q. Those exceptions are forced upon them by conditions the railroads cannot control, are they not?

A. Generally speaking, they cannot control them.

Q. For instance, you take the common points where the shorter line controls the rate: that is something that cannot be obviated, can it?

A. No, I do not see how we can obviate the short line controlling rate, although it don't always——

Q. It does in the absence of some other exceptional condition?

A. No, where it is based upon the statute rate of course the short line controls the rate, but there are so many other conditions going into rate making that the short line does not always control.

Q. Give me an instance where the short line common
2431 point does not control.

A. There are so many of them that it is very hard to determine. I will give you one. It is based on a contract.

The Chicago Great Western Rialroad is notoriously a long line from Kansas City to Chicago and yet it made the packing house product rate for the short line because it established a lower rate.

Q. By reason of contract?

A. They made a contract to get the business, by which they would enjoy a certain share of the business; not the entire business, but a certain percentage of the business.

There are innumerable instances of that kind where a long line may originate the lower rate between two competitive points.

Q. Is there any such case in Arkansas?

A. There are. Just as the shippers' traffic men may convince him (the railroad man) he can get some business.

Q. Can you give me any instances you have in mind now, in Arkansas?

A. No, I couldn't give any instances. I presume it would be very easy to determine from the records of the rates from St. Louis to Ft. Smith and Van Buren. If the Iron Mountain originated a rate, they created a condition. They are a long line and the Frisco is a short line.

Q. That is hypothetical, you do not know of such a case?

A. No, but I say that we know those things are done
2432 and contsantly done.

Q. Mr. Lincoln, I want to be informed on another matter and that is as to the extent to which distance, the mileage scale, is displaced by these exceptional conditions where they arise:

For instance, take a movement from St. Louis to Memphis or New Orleans: those points are both dominated, as I understood, as the exceptional condition—the rates from St. Louis to Memphis and St. Louis to New Orleans.

Is the distance scale of adjustment of rates abandoned there, or is it still kept in force as far as it can be operated?

A. The distance rate is entirely abandoned in the making of rates from St. Louis to Memphis and New Orleans.

Q. What is the rate to Memphis, Mr. Lincoln, from here to Memphis?

A. I cannot state positively. I think it is 7 cents, but I would not say; first class. It is 90 cents to New Orleans.

Q. It seems to me that that establishes just the contrary to what you say, begging your pardon.

A. St. Louis rates are not made on distance tariff, but on water competition.

Q. I asked you if the mileage scale is lost sight of or if it obtains in making rates between nearer-by and more distant points.

2433 A. The mileage scale is absolutely lost sight of in making rates.

Q. Perhaps in using the word "scale" I have run upon some

technicality. I will leave that out and put it in a more homely way:

How are the rates adjusted from St. Louis and Little Rock, as compared with the adjustment to Benton, Malvern and Arkadelphia, three points on the main line below Little Rock—how are they graduated?

A. I have not studied those rates lately, but I was of the impression that the rates were made to points South of Little Rock by adding the rates out of Little Rock to the Little Rock rate.

Q. In that case length of haul controls?

A. The length of haul South of Little Rock and the measure of rates control that.

Q. Take a shipment from St. Louis to Memphis, which you said on first class was at the rate of 70 cents and to New Orleans a rate of 90 cents——

A. I think those are the figures.

Q. Why is the rate 20 cents higher to New Orleans than it is to Memphis?

A. The rates made from St. Louis to New Orleans and to Memphis are made as against water competition. I presume they could get more money to New Orleans than they could to Memphis. They had boats running in the old days—they do not have them
2434 now—from St. Louis to Memphis. We also had boats which operated through St. Louis to New Orleans.

Q. Is it not a fact that the distance from St. Louis to those two places is a factor in fixing those two rates?

A. I do not think so at all because intermediate rates this side of New Orleans are higher than they are to New Orleans.

Q. What is the intermediate rate to Jackson and Meridian, as compared with Memphis?

A. I do not recall, but it is higher than from St. Louis to New Orleans, the rate from St. Louis to Jackson and Meridian, although the traffic moves through Jackson and Meridian to get to New Orleans.

Q. That establishes the proposition that this disturbance produced by these exceptional conditions is confined to the point where the exceptional condition exists, and does not affect the intermediate rates.

A. I say there was a commercial or competitive condition that required a departure from the mileage scale.

Q. As to New Orleans?

A. Yes, sir.

Q. But does not affect the intermediate points like Jackson and Meridian?

A. Not to the same extent; to some extent, but not to the same extent.

Q. But still the fact remains, Mr. Lincoln, that the rate
2435 to Memphis, the shorter distance, is less than the rate to New Orleans from St. Louis?

A. I may be wrong. It may be that the 90 cent rate may apply to Memphis and New Orleans.

Q. It is in testimony here that you are right about that—I won't say the exact cents, but the rate is higher to New Orleans.

How is it with reference to river points? To illustrate: a shipment by boat to New Orleans—Memphis is an intermediate point with reference to distance between St. Louis and New Orleans—how are the boat rates adjusted as between those two points, from St. Louis to New Orleans, and St. Louis to Memphis? Is it in regard to the distance?

A. I stated that I imagined that the making of the scale rates from St. Louis to Memphis lower by water than the scale from St. Louis to New Orleans, is probably due to the fact that there are certain boat lines operating from St. Louis to Memphis, that being their destination; whereas there are certain other boat lines which operated through from St. Louis to New Orleans; they, of course, could get more money into the lower river by not having the Memphis boat competition, but whether the boat from St. Louis to Memphis stopped there and made the measure of the rate or not, I don't know.

Of course you understand we have no boats from St. Louis to New Orleans and no rates.

Q. But the potentiality of the river is what affects rail-
2436 road rates, is it not?

A. When the competition exists it affects the railroad rates.

Q. The fact remains though, does it not, Mr. Lincoln, that the river rates are lower from St. Louis to Memphis than from St. Louis to New Orleans?

A. That is my impression. I would not want to make a positive statement upon that point at this time without consulting the tariffs as far as that is concerned. That is railroad rate you are speaking of?

Q. River rate.

A. There are no rates by river to New Orleans now. We have no river rates.

Q. I was just going to ask the question if that did not apply to rail rates.

A. The rail rates are the measure of the old river rates. At the present time we have no river rates to New Orleans.

Q. That is what influences and renders them the exception to the general rule you spoke of awhile ago?

A. The water competition made those exceptions to the general rule.

Q. Now, Mr. Lincoln, pursuing the matter a little further—and I am speaking now with my impression of what the testimony in this case is—is it not a fact that it must be a very exceptional condition that would bring about a lower rate for the long haul than would be fixed upon an intermediate shorter haul?

2437 A. It requires an exceptional condition. Some force of competition that fixes the lower rate for the longer haul to the terminal point, but as to the rates to the intermediate points that is something which we could debate at great length.

Q. Mr. Loncoln, I believe the rates from St. Louis to Eastern Arkansas are affected by the Memphis rates, are they not?

A. From St. Louis to points in Eastern Arkansas?

Q. Say Brinkley and Paragould.

A. I believe they were by rates from Memphis over to those points.

Q. Do you know how the rates from St. Louis to Paragould, which is perhaps forty, fifty, or one hundred miles closer to St. Louis, and Brinkley compare.

A. I do not. I don't recall. I should judge that so far as merchandise is concerned, you are speaking of class rates—I haven't had occasion to examine the tariffs for some time and I have had no opportunity to prepare myself with any figures in this case. I can ordinarily tell as to the grain adjustment, but not as to general merchandise rates, and in speaking as to an Arkansas adjustment I can only speak as to what has been the usual controlling factor in making the rate, not as to the exact measure.

Q. Mr. Lincoln, when you say in regard to the cost of service being the large factor in determining the rates, you mean
2438 in determining the details, don't you? You do not mean that a railroad could operate unless it could fix its rates with some reference to the cost of the service?

A. I say that the cost of the service is not the factor that controls the making of the rates. The results of operation necessarily, as to the revenue, you would have to have some regard to cost or you would go into the hands of a receiver.

Q. That is what I want to know.

Could a railroad be operated successfully if its rates were fixed without any reference to the cost of the service it rendered to the public?

A. If it absolutely disregarded it and handled its business without regard to cost of the service, it would either have to get a receiver or raise the rates.

Q. When you speak of the disregard of the cost you mean in fixing particular rates?

A. Yes, the particular rates, though, do not take into consideration to any great extent the cost——

Q. But you would not say that railroads are not governed by the same rules that all other industrial institutions are governed by, would you?

A. I say if they do not govern themselves by the same rule, they ought to.

Q. Are they not governed by the general and universal
2439 law which is necessary in manufacturing or industrial concerns, to so fix their prices that they would not be under the cost of production.

A. It should.

Q. Would not a railroad that disregarded it, be in the hands of a receiver?

A. Well, it has not done it.

Q. Are you familiar with the ratings of the Western Classification Committee?

A. Yes sir.

Q. Do you know the classification they make for the various commodities moved?

A. They divided them into ten classes.

Q. Do they have any regard or pay an attention to the character of the articles transported with reference to the cost and the risk that enters into the service in reference to the particular classes that are defined by them?

A. They consider a great many things in the development of the proper rating to be applied. The cost, the risk, the density and the volume of the traffic.

Q. They take all of those things into consideration, do they?

A. They do; by intuition, if not directly.

Q. Why is it that they would classify an article of small value and little density, weight, etc. lower than they would an article of greater value, that did not have so much density and was
2440 lighter.

A. To distribute the proportion so as to make the commodity as nearly as possible contribute its share toward the total revenue of the road.

Q. And they have in mind the cost of handling those different classes of commodities?

A. Those are all factors that should be taken into consideration.

Q. Does not this Committee do that?

A. Very largely.

Q. Does not the classification on its face show that?

A. As a whole it shows very good judgment.

Q. Take an article that is very valuable and fragile, easily broken, that would involve a heavy loss and damage claim: they are likely to put a higher classification on that than on one that is less likely to be broken?

A. The classification is the best prepared document of the relations that should exist between the different commodities. The classification shows the relations that should exist, not the rates.

Q. Mr. Lincoln, you stated that statistics of all kinds are kept by the railroads, and I remember you enumerated among those various commodities handled, the total of the tonnage, and that sort of thing: what are those statistics kept for?

2441 A. Well, they are kept for an index as to the business handled by your railroad—the operating sheets, cost of service, cost of handling business over certain divisions. The empty car movement is supposed to influence a man as to where he ought to get the tonnage instead of hauling back empty cars; for the guidance of the traffic man in the conduct of the traffic department.

Q. All those elements which you enumerate now enter into and influence the keeping of those statistics?

A. They should be used for that purpose.

Q. They also keep statistics in the same connection——

A. Of course, the commodity description is now kept in making reports to the Government.

A. In connection with those fiscal statistics they keep revenue statistics showing what the earnings are?

A. Oh yes, there is such a statement as shows the earnings of each station. I suppose about one traffic man in one hundred sees it. There are all kinds of statistics and they are very valuable, very valuable.

Q. One other important reason, I imagine, for all that is to enable the railroads to know how successful their operations are financially, is not that one of the reasons?

A. I think that is the necessity for statistical work; otherwise it would be impossible to know what your operation shows.

Q. That is the reason, or one of the causes, for keeping
2442 those statistics, to ascertain the cost relatively of handling certain commodities?

A. Yes, that is what it is for.

Redirect examination.

By Mr. HILL:

Q. Mr. Moore has inquired of you about the extra cost of handling less than car load movement: there is a higher rate for that, is there not, on the less than car load than the car load?

A. Oh yes; the rates are higher on less than car load business generally, with very few exceptions.

Q. That is for the purpose of taking care of this extra cost that you have spoken of?

A. Yes, sir.

Q. That would enter into these statistics I have given you, in round figures, twelve mills on interstate and six mills on state?

A. If you take the earnings into account it has got to show results.

Q. You told Mr. Moore that there are fluctuations in the movements of commodities that would change the revenue as well as the change of rate would change the revenue.

A. The average rate.

Q. Is not that equally true of commodities, state and interstate?

2443 A. Of all business, state or interstate.

Q. Is it not a fact that they move practically hand in hand, the same class of commodities on the same trains, as a general proposition?

A. State and interstate?

Q. Yes.

A. Yes, grain moves at the same time, local and interstate; lumber——

Q. These fluctuations that he refers to occur in one line of the traffic as well as in other lines of the traffic?

A. It will make its appearance in both state and interstate business.

Q. Speaking of the Western Classification of commodities as the basis of fixing rates: do not the railroads in the interstate tariff make many exceptions to that?

A. A great many, state and interstate.

Q. Both state and interstate? The State Commissions make exceptions and the railroads make exceptions?

A. Yes, sir.

Q. Mr. Moore has asked about a great many rates which he has called "exceptional" rates, like these New Orleans competitive rates; zone rates and things of that kind that are excepted from the distance scale:

I will ask you, as a general proposition, whether the traffic most largely moves under these competitive rates or does it move under the distance rates?

2444 A. It moves under the competitive rates.

Q. They constitute the larger volume, these rates Mr. Moore has been discussing with you, as based on competition conditions, river conditions and things of that kind?

A. A larger volume moves under competitive rates.

Q. Now, in referring to the rule of the interstate Commerce Commission that a through rate in excess of the sum of the locals is prima facie unreasonable, is not that founded upon the principle that you announced in your direct examination, that the rate making bodies, whether the state or the railroads themselves, make proportionately lower rates for the long haul than they do for the short, and if you have two short hauls they are supposed to be more expensive and must have more remuneration; it necessarily would follow that a rate for a long haul including that would be less; is not that about the principle of it?

A. The theory of rate making is that the long haul should be not as great a rate as the short hauls combined, and the commission in making their ruling—and I presume I had as much to do with that issue before the Commission as any one else—held that prima facie any combination of two local rates which are used by the railroads are lower than the through rate then the through rate is excessive. They did not, however, make any order that the through rate should be lower than the combination.

Q. You are referring to extra expense of the short haul business: would there be any expense other than on train and station

2445 cost?

A. The greater expense attached to the short hauls as compared to longer hauls are on local trains as compared with through trains?

Q. Yes.

A. The train expenses and the station expenses, the wear and tear.

Q. Now take the traffic expenses: there is no extra cost of traffic expense in regard to the length of the haul, is there, in the difference in the haul, state or interstate; long or short, or local and through?

A. The only feature that was brought out in station expense was that in the short hauls there were more broken shipments requiring more billing. That is station expense.

Q. That is station expense. Take traffic expense: would there be any extra charge on that?

A. I don't know how you use the term.

Q. I think that includes these outside agencies and industrial agents; I don't know how many other things. They are classified in that way—soliciting agents, traffic managers and freight agents, things of that kind: would there be any additional expense due to that?

A. In handling local business they don't need the expense of solicitation, outside agencies, that they do in connection with the competition business.

Q. That would be borne more largely by the competition
2446 business than it would by the local business?

A. Oh, if you get down to the exact science of cost, why yes, but that has not been found, any way to get to the science of the cost.

Q. Take your terminal expense on the through business: Mr. Moore asked you about terminal expense on trans-state shipments: are they not handled about every one hundred miles in division points?

A. One hundred to one hundred twenty five miles, approximately that.

Q. The train is usually broken up in places like Little Rock and a new train made up?

A. Oh yes at division points, especially important division points, or a junction point.

Q. Speaking of less than car load shipments which you have explained at some length, being more expensive to handle for way billing and other matters, I call your attention to the cotton movement in Arkansas: that is a very considerable volume of traffic, is it not?

A. Yes, the Arkansas traffic is very large.

Q. Do you remember how that is handled; do you know the detail of it?

A. It is local into the compress point, compressed and subsequently reshipped.

Q. All interstate, is it not?

A. All treated as interstate movement, through inter-
2447 state.

Q. The movement into the compress is usually less than car load, is it not?

A. Largely less than car load movement, yes.

Q. They usually pick up the cotton as they get to the stations, and take it to the nearest compress point as a less than car load, and then it becomes a carload when it leaves the compress?

A. In any quantity.

Q. That would have three terminal expenses, would it not?

A. That particular traffic would, yes, sir.

Q. Well grain would have three, too, would it not?

A. Most of the grain has three; the majority of it.

Q. I believe you have already explained those. Practically all of the grain is in the interstate movement?

A. Practically all handled on transit, would therefore be interstate movement.

Q. Summing up all these various items of extra cost which you

have gone into, are they the items of extra cost you had in mind when you made your original statement that you thought the revenue being double on the state traffic over the interstate traffic, took care of these extra expenses that you have been referring to?

A. I had in mind that the extra expenses of handling the short haul were taken care of by the rates which reflected the revenue.

2448 Recross-examination.

By Mr. MOORE:

Q. What do you mean by less than carload shipments of cotton for the purpose of taking it to the concentrating points?

A. Most of the cotton handled in Arkansas—I don't think the condition has changed, if it has I may be wrong in my statement—is handled on through rates from points of production to destination. Cotton is handled on local movements into the compress point on local rates in any quantity.

Q. You stated that a good deal of that was less than carload?

A. Yes, in less than carload lots.

Q. I would like you to explain what you mean by that.

A. Not solid carloads from point of shipment into the compress.

Q. Is it not the practice down there in that respect, that a car would be side tracked, loaded with cotton at the commercial centers where the cotton is collected from the farmer and then hauled in in carloads to the point of concentration; is that not the common practice?

A. It is taken into the local points along the line, placed on the platform and shipped into the compress point.

Q. Take the history of a loaded car: is that stopped and loaded until the capacity of the car is exhausted, from station to
2449 station, or does it usually start from the point of shipment with a full car?

A. I think not as a solid car. I don't think the movement into the compress point is full carload movements.

Q. What is your means of knowledge in regard to that?

A. Matters that came to my knowledge and information of eight or nine years ago, when I had charge of that business. We could not load our cars into the compress points full. We could not hold the cotton indefinitely at the local stations until it accumulated a carload.

Q. My information is that these cars are set out at the stations at which they are loaded, and as a rule—of course, there may be exceptions to it, but as a rule the car goes out of the station where it originates, loaded to its capacity: that is what I am talking about.

A. That was not the situation eight or nine years ago. It was the effort all the time to get them loaded full.

Q. You spoke a moment ago of terminal expenses in connection with trans-state cars: is not that rather a yard expense instead of the terminal?

A. That is a yard expense.

Q. There is a difference between terminal and yard expense? Is there not?

A. I don't think there is a great deal of difference between that in the handling of interstate or trans-state carload business, because it is simply a switching service. Now, that expense is smaller
2450 at some division points than at other division points. Take a division point like Little Rock: trains have to be broken up more there than at Poplar Bluff, or Hoxie—I think that is the division point now. There is more breaking of trains at Kansas City than at Sedalia.

Q. What would be done at Hoxie, for instance, I mean in the trans-state?

A. With a through train going to Hoxie?

Q. Yes, going to Texas?

A. Well, a through train starting from St. Louis to Texas pulls out of here as a solid train, we will say, to Hoxie. There the crew taking it releases that train. There is a new engine and a new crew to take it out. That train is broken up to some extent at Hoxie in order to take care of the through freight which may accumulate and go in that train and set out some that is not time freight.

Q. Please explain that.

A. There are three classes of freight in the train, red ball, green ball, and the third class on which the time does not cut a figure. When they break up at Hoxie they will put in red ball there and take out some unclassified freight.

I stated that at a point like Hoxie the service of breaking up the train and switching will not be as great as a point like Little Rock. There they will probably have to break the train up very
2451 largely because the contents of that train out of St. Louis to Little Rock is distributed over other divisions. It is not all going to Texas, but some may go to Fort Smith or Monroe or Shreveport, or Pine Bluff; so it requires the breaking up of that train and the making up of a new train at Little Rock.

Q. Let me see if I understand you: at Hoxie there was a car that was not to go on: with that the work would be to set that car off?

A. I would say that if you start the train out of St. Louis to Hoxie, and Hoxie will have cars coming in there from Cairo and from Thebes. Trains break at Hoxie.

Now, if there was some red ball freight, the time freight, in the trains out of Thebes and Cairo, it would be put in the train going south from Hoxie.

Q. Assume that that is trans-state tonnage.

A. Yes, trans-state, all of that is, or interstate tonnage, not necessarily trans-state,—Poplar Bluff or Texarkana or El Dorado.

Now they take out of that train the slow freight and put in the red ball so as to have that train take care of the red ball south of Hoxie. There would not be very much changing of the contents of that train at Hoxie, but there would be at Little Rock and there would be at Kansas City.

Q. If there were five cars on that train going to Texas, when it reached Hoxie,—I mean in its original condition as it left
2452 St. Louis—there are two cars that come in from Cairo which you want to put into that train to take to Texas, you simply hook those two cars on to the through train to Texas?

A. That is hardly the situation. I will try and explain a little better than I have.

We will assume—I don't know what the tonnage is of the engine that takes that train out of St. Louis to Hoxie—that is one division, there is a division in between—that the engine is rated to carry 1500 tons:

It has in the train 700 tons of red ball. It has in the train five hundred tons of green ball, that is 1200 tons.

Q. What is green ball?

A. That is next to the preferred freight. Green ball comes next to red ball.

Then it has in the train 300 tons unclassified freight on which time is not an object. Now, it arrives at Hoxie. These trains that came in from Cairo and Thebes have red ball freight in them. They will take out at Hoxie—by the way, Hoxie is on the main line, no branches there—in the train that carries 1500 tons there at Hoxie, they take out at Hoxie green ball freight—or they first take out the non-classified, the slow freight, and if necessary take out of it some of the green ball freight and put in the red ball, the time freight, to expedite the movement of that freight through.

2453 Q. They take out the unclassified freight?

A. Yes, first.

Q. And put in the higher grade for the purpose of giving the latter the benefit of the quicker movement?

A. That is predicated on the power in and out being the same.

Q. I understand. What do they do with the train when they have hooked on that additional green ball?

A. When they make up their tonnage for the train south of Hoxie that has to go on and what is left——

Q. The train goes right along?

A. Another train.

Q. What do they do with the unclassified traffic that is on there?

A. Leave it there to fill out the next train or carry it forward on a local train; or they may accumulate sufficient freight by reason of three divisions to take care of that and run an extra train; or, they may be able to handle on the train south of Hoxie if there are a greater number of tons to the engine than into Hoxie.

Q. That is yard service?

A. Switching and yard.

Q. For the purpose of expediting the more important freight with reference to the movement?

A. Yes, sir.

Q. And it consists in taking out of a train certain freight

2454 and putting in certain freight which cannot be delayed?

A. It requires a switching service, yes.

Q. Now, we will go to Little Rock: what do they do at Little Rock, tell me in detail.

A. The train going into there would be broken. It would be broken to a greater extent than at Hoxie because of the various branches—suppose there is a carload each going to Camden, Hope, Texarkana, Fort Smith or Galveston, or maybe to Pine Bluff: now there are three lines branching out there. If the red ball freight

is going in different directions that requires another breaking up of that train.

Q. That is, provided it contains cars that go on these different routes?

A. Solid cars of the same kind of freight moving direct from St. Louis to final destination——

Q. If you have two cars on that train going to Monroe, Louisiana, would you take that off and put them so they would go on the valley lines?

A. Yes, sir.

Q. That left you ten cars going to Dallas and there are five more cars there going to same destination or some point beyond there, but on the same road, they would be hooked on to the train?

A. The train is all broken up. It is not just a question of taking the engine off.

Q. What service is performed in doing that work?

2455 A. Switching, throwing it on the different tracks; they have there classified yards, I presume. They have splendid yards at Little Rock, I think it is the ladder style, throwing the cars on to different tracks to be made up in trains.

Q. That illustrates the service that is rendered in connection with the handling of cars?

A. Yes, sir.

Q. Now, let us assume that there are five cars on that train at Little Rock, tonnage for Little Rock:

One has to be delivered, we will say, to a plant in Little Rock; another to an industry south of Little Rock—the Davison brick yard, and another one to another point in Little Rock: what is the service rendered in reference to that tonnage on that train?

A. I would not undertake to state in detail the final operation at Little Rock. I know in a general way what it is because *because* I have been over similar yards in Kansas City a great deal.

They take those five cars there, they are set out on a track designed for switching cars from and to the local industries and the engine would take those cars and switch them to the different industries.

Q. When they are unloaded they are brought back empty to some other point?

A. Probably.

2456 Q. There is a terminal service in addition to the switching service that is applied to the trans-state cars, is there not? There has to be an additional terminal service in connection with those cars which are to be——

A. There is a greater measure, of course, in the switching. The cars have to be switched from the tracks to the train and some have to be switched from the tracks to the different deliveries. Those deliveries are a greater distance apart.

2457 Mr. MOORE: Mr. Lincoln, does this transstate traffic that you have been speaking of require the use of the station organization at points where the re-adjustment you spoke of is made?

A. Generally speaking, no.

Q. Or the station buildings?

A. No.

Q. Does it require the use of the house tracks for cars, loading or unloading?

A. It should not; I presume it does not.

Q. Or public tracks?

A. It should not.

Q. It does not require, does it, the use of tracks to elevators? It does not require the use of the tracks to elevators and industries? You have already spoken of industries I think?

A. It does not require the use of the elevators.

Q. Of tracks to elevators?

A. It does not.

Q. The office of this adjustment that you described this morning is to enable the train to go on with full tonnage, or a full train; isn't that the purpose of it?

A. Yes.

2458 Q. Now the transstate freight itself, which is passing through the State, does not require that, does it? Just these other trains that are brought in or let out at these places that require switching, isn't it?

A. Well, the train is composed of all kinds of freight.

Q. I understand, but you may have a train of cars, and ten of them would be transstate cars, and ten of them would be interstate cars, or you may want to add some interstate cars, make some changes, such as you describe, at a point on your line, passing through Arkansas. Now you said that that is done for the purpose of keeping up the tonnage of the trains, making a full train?

A. Done for the purpose of getting the most economical result.

Q. That would not be necessary to the movement of this transstate traffic itself, would it, for you to economize on account of these incidents brought into it—by the accumulation of other cars?

A. The necessity of taking in the other class of traffic, of course, is to reduce the cost of operation by using the engine to its full capacity.

Q. To utilize the full efficiency of the engine?

A. The crews and everything to its full efficiency.

Q. And to keep the transstate cars moving as rapidly as they can, is that it?

A. Of all through freight——

2459 Q. Yes, that is what I mean.

A. To keep it moving as rapidly as possible.

Q. Is every through train, transstate freight train, that goes across the state subject to that adjustment that you spoke of?

A. Of changing the contents of the train?

Q. Yes.

A. I think practically all of them the contents of the train is changed.

Q. Are you acquainted with the conditions that exist in Arkansas now on the Iron Mountain Railroad as to the route of through shipments from south to north and north to south?

A. I believe I am quite generally familiar with it, not in its absolute detail.

Q. Now do you know the location of the Memphis, Helena & Louisiana branch?

A. Yes, sir.

Q. Does not a great deal of the heavy through lumber business, which originates in territories south of Arkansas, and in Eastern Arkansas also, take that line, which is a low line—it is a low grade line, isn't it?

A. That line from Marianna, or in that vicinity of the M. H. & L. is a low grade line.

2460 Q. Does not the greater part of the transstate movement from Texas points, Eastern Arkansas points and Louisiana points move over that new line, that is, the Memphis, Arkansas & Louisiana by way of McGhee, Lexa and Paragould, crossing the Mississippi River at Thebes?

A. It is my understanding that with the completion of the connecting link between the Helena branch and the M. H. & L., running from a point in the vicinity of Marianna to McGhee, on account of it being a low grade line, the traffic originating or terminating on the M. H. & L., which is the line running from the vicinity of Arkansas City down to Farraday, where it connects with the Texas and Pacific Railroad, and the H. C. A. & N. division from McGhee to Alexandria, where it connects with the Texas and Pacific Railroad is moved by this new line, being the low grade line and the short line; and that business moving between the Mississippi River crossing St. Louis and south, and Louisiana points, including New Orleans, would move over that line, where it would be delivered or received by the Texas and Pacific at Farraday or Alexandria. It is not, however, my understanding that any of the Texas traffic moves by that line, with the possible exception of some traffic in the vicinity of—in extreme southeast Texas. Louisiana and Arkansas traffic having origination and destination north of St. Louis—east of St. Louis, east of the Mississippi River, would move over those rails.

2461 Q. Would not a great deal of that traffic move in unbroken trains, solid trains?

A. I couldn't say as to that.

Q. There is a considerable lumber business originates on the H. C. A. & N. line. To what extent would it move in unbroken trains north?

A. I couldn't say.

Q. How long is it since you severed your connection with this road?

A. Four years ago this month.

Q. Do you know whether or not here have been changes made in the manner of handling transstate traffic since you have severed your connection with that line, growing out of these new lines being established, and also the establishment of the classification yard at Dupo?

A. I can't say as to that definitely. As I have stated, it is my understanding, and it is logical, that the business should move that way; that this business passing between those territories pass over those new lines.

Q. And you are not familiar with those changes growing out of that?

A. Not in the detail of them, no, sir.

Q. Now do you know that the Iron Mountain Railroad has a large classification yard at Dupo?

A. Yes, sir, I know that.

2462 Q. What is the purpose of that, the establishment and maintenance of that yard?

A. Well, I presume the purpose—as it was started when I was with the company—is to take care of their interchange business with the eastern lines through East St. Louis, and also have the yards in which they could make up the trains and handle over Illinois Division, which is a low grade line.

Q. And isn't it a fact, Mr. Lincoln, transstate trains are made up there and classified with a view and for the purpose of giving them the longest possible movement without shifting cars so that traffic can be handled with the greatest economy?

A. That is the purpose.

Q. Any competent railroad operator in handling that class of traffic would do everything that could practically be done to economize by minimizing as much as possible the changing and shifting of cars in those trains, wouldn't they?

A. There and elsewhere. I would state that so far as that line is concerned. I believe it has been open for operation within about the last year, for continuous operation.

Q. Now do you know that in making up that class of trains and classifying the cars the practice now is to put all cars that may require moving, transferring and shifting together at the head of the train so that they can be moved or shifted in few movements?

2463 A. As far as is practicable. That is the instruction, and it is done I presume.

Q. That is done to facilitate the rapid and economical handling of this transstate traffic, is it not?

A. It is to avoid the unnecessary switching.

Q. Now, I believe, if I understood your statement as to the field of your labors, you have been largely with the traffic department, haven't you?

A. Very largely with the traffic department.

Q. Have you had any experience in the operating department?

A. Not directly, excepting for a limited period when I was in the operating department.

Q. When was that?

A. Well, that was about 1879 to 1888 when I was in the operating department.

Q. What line were you with then?

A. St. Joseph and Denver City at that time. It is now the St. Joseph and Grand Island Railway.

Q. What is the length of that line and character of its business?

A. Two hundred and fifty two miles; ran from St. Joseph, Missouri, to Grand Island, Nebraska, where it connected with the Union Pacific Railroad, and was a part of the Union Pacific from 1879.

Q. You have had no experience in handling trains and directing their movements, and in the operating department along
2464 the line of the Iron Mountain since you have been with it, have you?

A. I have had no experience in the matter of handling trains or

directing them. I have only had my experience in consultation with officials.

Q. For instance, now, when you describe the manner in which it is handled at Hoxie, you base it upon general impression and not upon actual experience?

A. So far as Hoxie is concerned upon general impression and upon my knowledge of the instructions that are given. So far as other points are concerned upon actual knowledge.

Q. Well, now, the instructions, I would take it, that are given are always to the end and for the purpose of directing the movement and shifting of cars and traffic with the least possible expense and with the greatest amount of economy possible in the conduct of the traffic, that is true, isn't it?

A. The purpose of the instructions in regard to making up trains, they are classified and all with the end in view of economizing in the operation, and the methods employed unquestionably brought about that result.

Q. You refer now to general instructions from general offices in St. Louis?

A. I am referring to instructions given by the chief of the
2465 operating end through superintendents and yard masters.

Q. Those instructions do not attempt to deal with the details of the operations, do they?

A. Well, the instructions go pretty thoroughly into details, because you have to in giving instructions to minor officers go into details.

Q. I believe you just stated you are not acquainted with the changes made in operating methods since you left the Iron Mountain—on that line I mean?

A. Yes, sir, I am somewhat familiar with them, because my relations are kept up with the railroads, as to their operations, my duties being all railroad duties.

Q. And your duties have been confined to matters pertaining to the traffic in the City of St. Louis, have they not—I mean the city interests of St. Louis?

A. My duties are to look after the traffic interests of St. Louis, and in looking after that interest I have to be generally informed upon the situation caused by competition for other companies.

Q. Your duties do not take you out over the lines of the railroad, do they?

A. Sometimes.

Q. Have you had opportunity, and have you taken occasion, to investigate the handling of this trans-state moving in the last four years?

2466 A. Not in the way you have mentioned, but have been giving a great deal of attention to the handling of trans-state traffic.

Q. That is from a traffic standpoint; have you from an operating standpoint?

A. From an operating standpoint as to cost. It was made necessary in my investigation in the Texas rate case and in the Southwest case.

Q. Now then your investigations have been of the character that

would cause you to go personally on the ground and make a personal investigation?

A. Not in those cases; has been acquired very largely from the reports of the railroads themselves as to results.

Q. Those are reports that contain such general statements, I suppose, as might be expected in official reports?

A. Well, they are very largely reports made for the Interstate Commerce Commission, and the State, and their annual reports.

Q. Speaking of that, what expenses are charged to traffic?

A. What expenses?

Q. What expenses are charged to traffic? You were asked by Judge Hill in your direct examination in regard to traffic expenses; I say what expenses are chargeable to traffic?

2467 A. Oh, I would not undertake to go into that in detail, that is, as to the methods employed by the railroads, in the items of them. It would require a considerable investigation on my part. I have not made it a study, and I do not recall all of the expenses. Charge off certain things not chargeable to traffic; passenger business and express business, various items.

Q. Has the Interstate Commerce Commission promulgated any regulation in regard to it?

A. They have.

Q. You don't recall what they are?

A. I do not recall the detail of their instructions.

Q. I think I understood you to state on your re-examination that a large volume of traffic is under competitive rates?

A. Yes, sir.

Q. Now, Mr. Lincoln, when you made that statement, you had in mind, didn't you, the traffic throughout the country at large?

A. Throughout the country at large.

Q. You were not speaking with reference to the Iron Mountain and the St. Louis Southwestern railroads, were you?

A. Well, I think the general adjustment of rates upon those lines is largely the force of competition.

Q. Now isn't it a fact, Mr. Lincoln, the rates applicable to the heavy movement of traffic on the Iron Mountain and the St. Louis Southwestern lines in the State of Arkansas are graded

2468 according to distance?

A. I am not informed as to the volume of the movements between points in Arkansas; but to my best knowledge and ability, the business which moves between points in Arkansas is moved on distance tariff rates, which is a mileage scale.

Q. Now Mr. Watson testified to that effect in this case. You know who I mean by Mr. Watson?

A. Yes, sir.

Q. Assistant General Freight Agent of the Cotton Belt?

A. Yes, sir.

Q. And that the larger volume of traffic of both of those lines—interstate traffic into Arkansas—was under the rate of distance. You would not undertake to say that statement by him is not correct?

A. Is that the interstate business?

Q. The business into Arkansas, business from St. Louis into Arkansas?

A. That the business from St. Louis to Arkansas moves on Arkansas distance rating?

Q. No, I didn't say that—the Arkansas distance rate is based on the mileage; the rate is adjusted in reference to the distance, and not regardless of the distance of the haul?

A. No, I would not say that the rates from interstate
2469 points into and out of Arkansas—the interstate traffic—was adjusted on a mileage basis, because I do not think it is.

Q. Now we will take the rates on the St. Louis Southwestern, stations on the line of that road, for instance Paragould; will you say that those rates are not based on the length of the haul, I mean now from St. Louis as the initial point?

A. I was going to state that so far as the interstate rates from St. Louis—or the rates from St. Louis, which are interstate rates, to stations on the Cotton Belt Railroad in Arkansas are concerned, they, as I recall it without going into detail, are based: Points south of Pine Bluff upon rates to Pine Bluff plus the Arkansas Distance Tariff. Of course, the rates into Pine Bluff are controlled by the Arkansas State rate, which would be a mileage scale from Memphis; and the rates from other territories are made with relation to that adjustment to a greater or less extent, not to an absolute degree. But so far as the Cotton Belt is concerned, its rates from St. Louis are more nearly upon a mileage basis than any of the other lines in Arkansas.

Q. How is it north of Pine Bluff?

A. North of Pine Bluff I do not recall the adjustment, but the rates do increase to a certain extent as the mileage increases. From the Missouri State line going down to Pine Bluff the rates increase as the mileage increases.

2470 Q. Now what is the condition on the Iron Mountain on its main line south from St. Louis to points in North Arkansas, Central Arkansas and points south of there?

A. As to the Iron Mountain main line?

Q. Yes.

A. Which runs from Little Rock to Texarkana?

Q. Yes, from St. Louis—basing on St. Louis?

A. Its rates are made with reference to the rate into Little Rock, which is controlled by the Arkansas rates from Memphis, indirectly, not absolutely. But to points south, it is made on the Arkansas tariff added to the Little Rock rate. I am not clear in my mind as to the present adjustment. I think the exception to that basis—speaking of the main line—obtains at Hope, Arkansas, and at Texarkana, Arkansas; that I am not positive. Hope may be on the full combination on Little Rock, that I am not sure—not in all rates. Texarkana is not on the full combination in all cases.

Q. You do not undertake to testify then in regard to those?

A. Not as to the detail.

Q. Now, how is it on points on the Camden branch?

A. At points on the Camden branch——

Q. I don't mean at Camden, but take it north and south of Camden?

Q. Points on the Camden branch, it is my understanding
2471 that the present class rates are on the Arkansas Distance Tariff added to the Little Rock rate. As to the details of those figures I would not state. I have not had an opportunity to go into them, and I would not state definitely as to merchandise adjustment.

Mr. MOORE: That is all.

Redirect examination.

By Mr. HILL:

Q. Mr. Lincoln, Mr. Watson testified yesterday to some particular rates to which I want to call your attention. Merchandise rates from St. Louis to Paragould eighty-one cents a hundred, L. C. L.; boots, and the same from St. Louis to Memphis, sixty-five cents a hundred; boots and shoes, St. Louis to Paragould eighty-one cents, and to Memphis sixty-five cents; that would apply to merchandise as well as L. C. L.; packing house products, L. C. L., St. Louis to Paragould fourth class, forty-three cents, to Memphis twenty-six cents per hundred; less than car load lots would be twenty-six cents a hundred to Memphis, and forty-three to Paragould; same proportion as to merchandise; merchandise twenty-six cents to Paragould, twenty-one cents to Memphis. I call your attention to these higher rates to Paragould, and the statement that the traffic passes right through Paragould to Memphis, the rate being higher to Paragould than to Memphis; I will ask you to state what adjustment, if you know, that that is made from?

2472 A. I could not say as to just how the rates obtain at Paragould, as to the measure of the rates, and could only state that—based upon previous knowledge of the situation—that the rates from Paragould are adjusted with reference to the Arkansas General Rate Adjustment; probably based upon rates from the nearest Mississippi River crossings; whereas the rates from St. Louis to Memphis are competitive rates, which probably originated with water competition, to some extent, and to some extent with the competition met with at Memphis from other sources of supply—that is, in their competitive markets. For example, a rate from St. Louis to Memphis might not have been compelled by water competition, but would have been compelled by a rate adjustment from Louisville, a competing market.

Q. Does not that look like it took the rate to Memphis and then charged the Arkansas adjustment from Memphis back to Paragould to the back haul, although they carried the stuff right through—they stopped the Paragould shipment at Paragould and carried the Memphis part of it on through Paragould?

A. I hardly think that Paragould was based on the rate to Memphis and the rate back. I think it is more likely that the rate from Cairo to Paragould was the controlling rate.

Q. Wasn't much mileage consideration in those two rates was there?

A. No, they are not made on mileage consideration com-
2473 pared with Memphis.

Q. We had in evidence here many illustrations, that I will

not go over with you, showing the rate from Little Rock was considerably higher than the rate to New Orleans, with the same commodity from St. Louis; that would not be on a mileage scale by any means, I suppose?

A. The rate is not made upon a mileage to Little Rock as compared with the rate to New Orleans.

Q. Mr. Moore referred to through trains that would have ten cars of transstate, and probably ten other cars would be set out at Little Rock, and asked you, if I understood him correctly, whether this switching or breaking up of a train was not necessary so far as regards the ten cars that were going on through. I will ask you if this switching was not done and other cars hitched onto those ten cars, if that would not make the transstate freight a very expensive proposition?

A. I think I catch the idea is this; if the ten cars of transstate traffic were allowed to go on through as a continuous movement, without putting other cars into that train to bring it up to its tonnage that the engine can haul and the crew can handle, that it increases the expense of handling the transstate freight—undoubtedly.

Q. Well, that would be true if it started from St. Louis that way?

A. Anywhere.

2474 Q. It is economy of the transstate business, as well as general economy, if you break up these trains at these division points or distributing points, as you have indicated has been done?

A. It is economy to all of the traffic handled to make each engine haul full tonnage and not having light trains, whether it is one class of freight or another.

Q. Then it is good economy to set out these through trains at Hoxie or Little Rock, whatever the point, and wait for a train to be made up to carry them?

A. It is economy to wait at a division point and fill out your trains.

Q. In reference to various services performed at the division points, you generally have an inspection? Isn't that a service performed at these division points?

A. Inspection of what?

Q. Inspection of the cars?

A. I assume the cars are inspected at the division points. I hadn't thought of that.

Q. The wheels, boxings, and everything of that kind?

A. That is what is usually done at division points, is to attend to equipment.

Q. That is a cost of service, of course, that would apply——

A. To all.

Q. Apply to all alike?

A. Yes, sir.

2475 Mr. HILL: That is all, Mr. Lincoln.

Mr. MOORE: Nothing further.

[End of Volume I.]